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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1156th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 1996, at 10.30 a.m.

Chairman: Mr. BANTON

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GE.96-17651 (E)

The meeting was called to order at 10.30 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the forty-ninth session of the Committee on the Elimination of Racial Discrimination.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda)

2. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the provisional agenda as contained in document CERD/C/305.

3. It was so decided.

REPORT OF THE CHAIRMAN (agenda item 2)

4. The CHAIRMAN, reporting on developments since the Committee's last session, said that the Committee's concluding observations adopted at the forty-eighth session (CERD/C/304 and Add.1-9) had attracted the attention of the press in the reporting countries. In connection with the concluding observations on Denmark, Den Danske Forening had written to ask under which paragraphs of the Convention it was considered illegal to argue for the repatriation of immigrants and refugees. A reply had been sent to the effect that Denmark had enacted legislation to meet Convention obligations and that the Committee had recommended that the Danish authorities should take action if either the licence to broadcast or the use of the telephone service in question led to any breach of the law.

5. He drew the Committee's attention to a set of documents which constitute a single report on United Nations action concerning Rwanda which would be made available to interested Committee members.

6. At a joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, it had been agreed that the two Bureaux would meet during the current session to review developments in connection with the Third Decade to Combat Racism and Racial Discrimination.

7. In the light of the discussions at the 1155th meeting on the allocation of time to the consideration of reports, the Committee might agree that substantial time be allocated to initial reports, that more time be allocated to comprehensive periodic reports than to updates and that more time be given to States which had much to report or about which the Committee had expressed concern than to States for which questions of racial discrimination were rarely raised. It might also agree that reports should continue to be considered in the order in which they were received, but that priority should be given to any States whose reports were overdue and, lastly, that less time should be allocated to first-round reviews than to periodic reports, while second-round reviews should be taken formally, as at the forty-eighth session. Country rapporteurs might not be needed for second-round reviews unless there was some indication that the State in question intended to be present or had substantive new material, or where there were good reasons for thinking that there would be substantive new material.

8. The question of time-limits for statements entailed consultations with State representatives and country rapporteurs. He therefore proposed that for each initial report, the Chairman, Rapporteur and Secretary should prepare proposals about timetabling. For periodic reports, the mission or delegation of the reporting State should be consulted in advance as to the best way of fitting their report into the Committee's overall timetable. The country rapporteur should consult with the Chairman if more than 20 minutes were deemed necessary to open consideration of the report. When the country rapporteur had spoken, the Chairman, after ascertaining the number of speakers, should divide the available time between them. He recalled that, at the Committee's 1155th meeting, members had in general favoured a 10 minute limit.

9. At the Committee's thirty-third session in New York, there had been general agreement that, provided the member who opened consideration welcomed State representatives and congratulated the reporting State where appropriate, it was unnecessary for other members to repeat those courtesies.

10. Members were asked to reflect on those suggestions and pass on their views to the Bureau so that a recommendation to the Committee could be formulated.

11. The periodic reports from Cambodia and Pakistan would not be considered at the current session for timetabling reasons.

12. The Committee had to date received no reply to its message to the Government of Georgia asking for information on the new Minorities Law to be included in its overdue initial report. A further reminder could be sent if the Committee so wished.

13. At its 1155th meeting, the Committee had asked for a list of non-self-governing territories administered by States parties. The question would be considered more fully at its fiftieth session.

14. Letters had been sent out to introduce Committee members who had agreed to liaise with other institutions, and the Bureau would discuss that matter and the representation of CERD's views at the 7th meeting of Chairpersons of Treaty Bodies in September 1996. Members were invited to communicate their views to Bureau members.

15. He suggested that it might be more convenient if the information contained in the provisional agenda with its annotations, in the proposed programme of work and in the list of country rapporteurs, could be consolidated in a single document. Members were accordingly invited to pass on their views in that respect to members of the Bureau.

16. An E-mail facility, EWNET, had been established by the Prevention/Early Warning Unit of the Centre for Refugee Studies at York University, Ontario and was available to persons interested in early warning.

TRIBUTE TO THE MEMORY OF GEORGE LAMPTEY

17. The CHAIRMAN said that news had been received of the death in May 1996 of Mr. George Lamptey. He had written to Mrs. Lamptey conveying the Committee's condolences.

18. At the invitation of the Chairman, members of the Committee observed a minute of silence in tribute to the memory of George Lamptey.

19. Mr. ABOUL-NASR welcomed the idea of a Chairman's report on a regular basis and expressed his appreciation for the letter to Mrs. Lamptey. The many interesting suggestions put forward by the Chairman with a view to greater efficiency required careful consideration and might therefore be discussed at a later stage.

20. Mr. DIACONU expressed concern that the Chairman's reply to Denmark did not address the situation in the country itself as much as a question raised by Den Danske Forening. NGOs in Denmark always reacted strongly to criticism of the country from outside. Furthermore, Denmark like a number of other western countries, had not fully complied with the provisions of article 4 of the Convention.

21. The CHAIRMAN said that he was confident that a reading of the letter received from Den Danske Forening, which would be made available to Mr. Diaconu, would remove any concerns about his reply.

22. Mr. GARVALOV agreed that the Chairman's report was useful, but that more time was needed for reflection.

23. With regard to the allocation of time, he said that State reports and reporting differed considerably, some involving less discussion than others, irrespective of whether they were initial or periodic, and should be considered accordingly. The Committee should not be bound by hard and fast rules designed to limit discussion when general interest was generated. A number of overdue reports were to be discussed at the present session and more time should be allocated to those discussions.

24. Mr. WOLFRUM associated himself with the views of previous speakers with regard to the Chairman's report and proposed time-limits. The Committee's discussions with States parties should develop in a responsive way from the answers to questions raised.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

25. Mr. HUSBANDS (Secretary of the Committee) informed the Committee that there had been altogether five requests for postponement of consideration of States parties' reports or of the situation in States whose reports were overdue. Two - from Panama and Guatemala, which had already submitted reports - had been conveyed in the form of notes verbales. His understanding was that the Governments concerned wished to send experts from their respective capitals and that that would be easier to arrange for the March 1997 session. There had been two other formal requests for postponement, one from Gabon, by letter, and one from the Bahamas, by fax.

Lastly, it had emerged from a discussion with the Ambassador of Lebanon that a representative of that country would be requesting postponement of the Committee's consideration of the situation in that State party.

26. The CHAIRMAN, drawing attention to the proposed programme of work, said that consideration of the Committee's early warning and urgent procedures, which had been scheduled for 14 August and subsequent days, might be brought forward if members so wished, in view of the changes in the timetable for consideration of reports following the requested postponements.

27. Mr. SHAHI, referring to the Committee's early warning and urgent procedures, expressed alarm at reports in the press and elsewhere about an impending genocide in Burundi along the lines of the events in Rwanda. Conscious though it was of its own limitations in dealing with such situations of massive-scale violence, the Committee owed it to itself to do everything it could to prevent them from erupting. There was a danger of doing too little, too late. Before the Committee could take any action in the matter, however, it must be accurately informed both of developments on the ground and of the action taken and positions adopted by the two main competent United Nations authorities - the Security Council and the Secretary-General. He asked whether the secretariat could enlighten the Committee in that respect and about any developments such as the deployment of an international peace force.

28. The CHAIRMAN said that inquiries would be made; he was informed by the secretariat that a written reply to Mr. Shahi's questions could be expected by the following Wednesday.

29. Mr. de GOUTTES said he shared Mr. Shahi's view about the alarming situation developing in Burundi, and also in other parts of the world. He would be in favour of an early discussion of the item concerning early warning and urgent procedures, particularly since, as the Committee member responsible for liaison with the High Commissioner for Human Rights, he would be meeting the High Commissioner the following evening and wished to convey to him the Committee's views on the most important topics for discussion. He had drawn up a tentative list, with Burundi as the top priority; it further included the situation in the former Yugoslavia, with special reference to the former Yugoslav Republic of Macedonia and to Croatia, and also Papua New Guinea and Liberia.

30. On a procedural issue, he drew attention to paragraph 6 of the informal note to the Chairman by the secretariat referring to the difficulties in translating any country reports exceeding 32 pages into all the working languages. That meant no doubt that they would be produced in English. His position, which was the French position, upheld the principle of the use of French as an official and working language. He was aware of the budget difficulties, but it was a matter that warranted further discussion. In particular, country rapporteurs designated by the Committee must be availed of the relevant country report in their own working language.

31. Mr. WOLFRUM said that it was the Committee's mandate, and indeed obligation, to consider the situation in Burundi as soon as possible. The question of Burundi and the involvement of the High Commissioner for Human

Rights there would be the focus of Mr. de Gouttes' meeting with the High Commissioner. He agreed with Mr. Shahi about the need for the Committee to b informed about the Security Council's intentions, but expressed doubt about its willingness to act. The Committee should receive the necessary information without delay and, with all the facts to hand, appeal to the Security Council to take action.

32. On another matter, he noted that the list of documents available in secretariat files contained a number of errors in respect of country rapporteurs.

33. Mr. SHERIFIS, referring to the organizational matters mentioned in the Chairman's report, particularly regarding the proposed ways in which the Committee might better cope with its workload, said that the Committee should give further consideration to the possibility of lengthened sessions and perhaps agree on a position. The Chairman's proposals concerning the relativ length of time to be spent on different kinds of report needed further study, but flexibility should be the order of the day. He agreed that there was no need to appoint country rapporteurs for second-round reviews.

34. The situation in Burundi was a matter of paramount concern to the Committee and should be considered before the end of the first week of the session. He hoped that the information provided to the Committee would include a copy of a United Nations report on Burundi dated 18 July 1996 which had been referred to in the international press. He asked whether the Committee might be informed orally about the situation in Burundi by a member of the secretariat.

35. The CHAIRMAN said that he had anticipated a discussion on the Committee programme of work at the opening meeting, to give members an opportunity to raise the question of the application of the Convention in any State party other than those for which time had officially been set aside in the timetable.

36. Mr. ABOUL-NASR said that the Committee should begin its consideration of emergency situations and early warning procedures as soon as possible. Burundi was not the only problem; there were many other countries which gave cause for concern. It would be most valuable to have a briefing from the High Commissioner for Human Rights describing what he had done to deal with those situations and the action he expected from the Committee.

37. Mr. GARVALOV agreed that the Committee should consider the situation in Burundi and similar cases as soon as possible. The Committee was morally bound to react to such situations and should make its voice heard, even if it was only to issue an appeal for moderation.

38. Mr. YUTZIS said that the Committee should obtain as much written information on the situation in Burundi as possible. It should also invite the High Commissioner for Human Rights and representatives of other specialized structures within the Centre for Human Rights to provide oral statements on their activities.

39. Mr. RECHETOV said that the High Commissioner for Human Rights should be encouraged to tell the Committee what action he had taken and say what he thought were currently the most dangerous situations in the world. That would help the Committee to decide what its own priorities should be and how it could best support the High Commissioner's efforts.

40. Mr. SHERIFIS noted that the High Commissioner was due to address the Committee the next morning, which would give members the opportunity to raise specific issues of concern. He hoped that the High Commissioner would be able to spend enough time with the Committee to debate fully all matters of mutual interest.

41. Mr. van BOVEN said that the set of documents which had been sent to him was incomplete. A set of documents had been provided for each member in the meeting room, but he would like to know whether he was allowed to take them away for study outside meeting hours. In the past, copies of individual documents had been available at the back of the room, but it appeared that they were no longer provided. Where could he obtain the documents he needed?

42. Mrs. SADIQ ALI said that she had received a fax telling her to expect a number of books, which had never actually arrived.

43. Mr. HUSBANDS (Secretary) said that the number of documents issued had been kept to a minimum for reasons of economy. The summary records of previous sessions were available for consultation in the meeting room; members had not been issued with their own copies. He apologised to Mr. Wolfrum for any mistakes which might have been made in the list of documents available in secretariat reference files.

44. Each member had three folders of documents. The first, in a blue cover, contained basic reference documents such as the text of the Convention and the Committee's rules of procedure. The second folder, in a black cover, contained documents relevant to the report to be considered during the current session, namely the core report of the State party concerned, the report under consideration, previous reports and the Committee's previous concluding observations. If any of those reports were missing from members' personal sets of documents, it was probably because they had not been issued by the time the documents had been dispatched. The third folder, in a grey cover, contained other relevant documents, including the provisional agenda and the proposed programme of work. It also contained information about those States to be considered by the Committee under its emergency and early warning procedures, including Burundi. More information held by the secretariat was available for consultation in the meeting room.

45. Members could take documents from the three files away from the meeting room for study outside meeting hours, and could take them home at the end of the session, with the exception of the blue file of basic reference documents. They could also order copies of individual documents from the documents service at door 40.

46. The CHAIRMAN asked the members of the Committee if there were States, other than those listed in the programme of work, that they wished to deal with under agenda item 4 on early warning and urgent procedures.

47. Mr. ABOUL-NASR, supported by Mr. GARVALOV, urged the adoption of a general recommendation or decision covering early warning and urgent procedures whereby the Committee could express alarm at human rights violations and genocide in various areas of the world and call on interested bodies such as the Security Council and non-governmental organizations (NGOs) to work towards a solution. Individual situations could be dealt with in greater detail whenever necessary, preferably on the basis of information from the High Commissioner for Human Rights, who acted as a focal point for information from a host of bodies and could thus provide an overall picture of a given situation of concern to the Committee.

48. Mr. SHERIFIS said that the question of a general recommendation had been discussed at the forty-eighth session when it had been decided that a draft general recommendation would be submitted for consideration and adoption at the forty-ninth session. The general recommendation would refer only to human rights violations covered by the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, and would in no way seek to give the Committee responsibilities that lay elsewhere, for example with the Security Council.

49. The CHAIRMAN suggested that the Committee should compile a report on the expediency of early warning and urgent procedures in the light of situations around the world since 1994.

50. Mr. de GOUTTES agreed that a general recommendation should be drafted and adopted, that the value of the Committee's innovative early warning and urgent procedures should be emphasized and that the High Commissioner for Human Rights should address the Committee as soon as possible.

51. Mr. van BOVEN said that the general recommendation should emphasize the particular contribution the Committee could make, and be careful not to encroach upon the responsibilities or assume the role of other bodies such as the Security Council or the Commission on Human Rights.

52. The High Commissioner for Human Rights, as the person responsible for gathering, channelling and coordinating information of relevance to the work of the Committee, was an essential partner in its activities and in its decisions on where early warning and urgent procedures were warranted.

53. The work of the country rapporteurs for second-round reviews was valuable for the Committee's consideration of human rights situations in States parties and should continue.

54. Mr. WOLFRUM agreed that the information provided by country rapporteurs on second-round reviews was extremely useful in that it gave the rest of the members of the Committee information that they would not have time, or would find it very difficult, to obtain themselves.

The meeting rose at 12.35 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1157th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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Tenth, eleventh, twelfth and thirteenth periodic reports of Brazil

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

1. The CHAIRMAN, referring to the timetable for the consideration of r submitted by States parties, said that the Bureau recommended the postpo until the Committee's fiftieth session of consideration of the reports o Panama and Guatemala, together with that of the Bahamas, which had promi submit its report by 15 November. Consideration of the report of Gabon be postponed until the fifty-first session. With regard to Lebanon, a representative of that country would be present on 9 August and would be verbally to agree to the postponement of his country's report until the fiftieth session on the understanding that it would reach the Committee end of November. If the representative of Lebanon said that would be difficult, the question of the date of submission of the next report cou reconsidered. During his visit he would also have an opportunity to dis the previous report with the rapporteur and gain a better idea of what t Committee expected of the next report.

2. Mr. ABOUL-NASR said that in view of the difficulties some countrie in submitting their reports, particularly if they had no representation Geneva, the Committee should not adopt too threatening a tone towards th

3. The CHAIRMAN said that the Government of the Bahamas had written t inform him that its report would be submitted late. In the case of Pana was the State party itself which had requested the postponement of consideration of the report.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES P UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth, ninth, tenth, eleventh and twelfth periodic reports of Bolivia (CERD/C/281/Add.1; HRI/CORE/1/Add.54)

4. At the invitation of the Chairman, the members of the Bolivian del took seats at the Committee table.

5. Mr. LEMA PATIÑO (Bolivia) said that the report submitted to the Committee, which described all aspects of the situation of human rights Bolivian society, was self-explanatory.

6. Mr. LECHUGA HEVIA (Country Rapporteur) said that the report gave a account of the socio-economic problems which sometimes made it difficult implement the Convention, but like the previous reports, it left many questions unanswered. Linguistic problems, which the Committee on the Elimination of Discrimination against Women had reported in 1991 in the of Bolivia in particular, were an obstacle to the defence of the rights indigenous people and to communication between the various social groups combination with illiteracy, that was necessarily a hindrance to the implementation of the Convention. In order to determine which populatio groups were most discriminated against, therefore, the Committee would n more precise data on the ethnic composition of the population. When the previous report had been submitted, it had been stressed that linguistic differences did not necessarily mean racial differences, but information

that question was still inadequate. The geographical isolation of certain communities was another problem to be taken into account in assessing the situation of all population groups. The Government of Bolivia admitted that, despite all its efforts, problems still existed for certain isolated ethnic groups, such as the Guarani people, but it might be asked what precisely was being done or planned to remedy those problems.

7. It also seemed that the situation of children in Bolivia left much to be desired. Since more than one third of the population lived in poverty, it was obvious that adopting constitutional or legislative measures was not enough and that other more practical measures were required. The forward-looking initiatives of the Minors' Code, the 1993 Judicial Organization Act, the decrees recognizing special rights and territories for the indigenous people, compulsory teaching of human rights in schools, military colleges and police academies, and the Popular Participation Act should be welcomed. It was, however, surprising that the Educational Reform Act, the purpose of which was to do away with all inequalities in education and which the authorities presented as a wholly progressive initiative, should have given rise to strong protest on the part of teachers and pupils. It would be interesting to hear how the delegation explained that fact.

8. The establishment of the National Organization for Children, Women and the Family, a Human Rights Department in the Ministry of Justice and an Ombudsman should further enhance the observance and promotion of fundamental rights. But despite all those institutional and legal improvements, practical problems remained, notably with regard to equality between men and women, equality before the law and access to the courts. It was clear that the protection of the rights of the Quechua and Aymara ethnic groups, for example, required the adoption of specific measures to supplement declarations of principle, as the Committee had been stressing since the early reports.

9. A number of gaps also remained in respect of article 4 of the Convention, since the Bolivian Penal Code did not classify racism or any other form of racial discrimination as an offence. Where article 3 was concerned, Bolivia had supported the United Nations resolutions condemning apartheid in South Africa when it had still existed, but in its General Recommendation XIX (47) the Committee had made it clear that racial segregation was not restricted to apartheid in South Africa and that the States parties should continue to exercise extreme vigilance in that regard. Further progress was still necessary in the implementation of articles 6 and 7 regarding access to the courts, education, culture and information. With regard to employment, the ILO Committee responsible for considering government reports had noted that 1992 Bolivian legislation on public service employment contained no provisions prohibiting discrimination, as ILO Convention No. 111 required. Regarding ILO Convention No. 169 (Indigenous and Tribal Peoples Convention), the same Committee had noted a certain degree of conflict in Bolivia between respect for cultural diversity and a tendency to absorb traditional institutions into the dominant cultural systems.

10. The recent confrontations between police and students or coca-leaf producers raised certain questions with regard to article 5. Where

coca-growing was concerned, the Committee would like an assurance that the conflict with the indigenous communities in question had no racial connotations.

11. Lastly, the Committee welcomed the frank manner in which the Bolivian authorities had described their difficulties and their concern to continue trying to resolve the problems that arose in a multi-ethnic and multicultur context.

12. Mr. van BOVEN said that the special measures the Bolivian Government taken in support of the indigenous people, especially in recognizing their lands, seemed to be in keeping with the requirements of article 2, paragraph 2, of the Convention. However, he would like to know how the Bolivian authorities reconciled recognition of the indigenous territories w the prohibition of racial segregation contained in article 3. He would als like details on Decree No. 22,612, mentioned in paragraph 20 of the report, which should make it possible to designate indigenous ethnic groups and peoples. Mr. Lechuga Hevia had rightly pointed out that Bolivia had not do enough to penalize incitement to racial discrimination or to implement article 4, which was in fact binding. Lastly, the Bolivian Government had admitted frankly that certain categories of persons did not have access to penal system (para. 44 of the report) or were marginalized from the educat system and certain social services, but had not said what specific measure were envisaged to remedy that situation. The next report should provide m information in that regard.

13. Mrs. ZOU DECI expressed regret that the report said nothing about the steps taken to remedy the dramatic situation of the Guaraní population mentioned in paragraph 22 of the report. Paragraph 27 (b) of the report stated that the Bolivian Penal Code did not classify racism or any form of social discrimination as an offence. She asked whether the Bolivian Government was planning a revision of the Code in order to bring legislati into line with international law.

14. Mr. DIACONU noted that the Bolivian Constitution contained some very progressive provisions very much in keeping with the Convention. He also noted that the Educational Reform Act provided that no distinctions should made on the grounds of the ethnic group, culture or region of the person concerned. He welcomed the fact that the Convention was part of the Boliv legal system and could be directly invoked in the courts. It remained to seen precisely what the relationship was between Bolivian law and the Convention and which instrument applied when a law was at variance with th provisions of the Convention.

15. Merely mentioning several indigenous peoples did not give the Commit clear idea of their place in Bolivian society. For that the Committee wou need to know what proportion of the population each people represented. I would also need specific examples to show that the country had set out on road to the elimination of racial discrimination opened by the Constitutio and that it had enacted laws for that purpose, as enjoined by article 2, paragraph 1 (d), of the Convention. Some action had already been taken to that end, such as the delimitation of indigenous territories whose resourc were exploited by the indigenous people occupying them, but he was surpris that the Guaranís, for example, whose difficult situation the report

recognized, did not possess such a territory, especially following the findings of the Human Rights Commission of the Chamber of Deputies in 1994.

16. He associated himself with Mr. Lechuga Hevia and Mr. van Boven in calling for measures under article 4 of the Convention to combat and punish incitement to racial discrimination. Referring to paragraphs 28 and 29 of the report, which described the murder of Mormon missionaries from the United States and the sentence handed down against the murderers, he asked whether similar acts had not been committed against indigenous Bolivians and how Bolivian justice had reacted in those cases. The matter was related to another of the Committee's concerns - the implementation of article 6 of the Convention and the administration of justice in Bolivia. It was clear that many Bolivians had no access to justice, if only because of the language barrier.

17. Lastly, he wished to know whether there were schools where indigenous pupils were taught their native language as well as Spanish.

18. Mr. de GOUTTES associated himself with the previous speakers in welcoming the frankness which characterized the report under consideration. He emphasized the clarity of the core document (HRI/CORE/1/Add.54), which contained a comprehensive picture of the social and economic situation in Bolivia and set out the problems to which the observance of human rights gave rise. He noted that paragraph 258 of the document referred to the human rights violations perpetrated by the special police against peasant coca-leaf producers in the context of the campaign against drug-trafficking. That was a problem caused by the clash of two pressing requirements: the need to combat drugs and the need to protect the rights of persons under investigation. Similarly, paragraph 39 of the periodic report bluntly listed the factors which characterized the blatant inequality of Bolivian citizens in the eyes of the law. According to paragraph 44 of the report, it was not only specialists but also the general public who denounced the fact that it was impossible for poor people and non-Spanish speakers to have access to justice.

19. Referring to the implementation of article 4 of the Convention, he in turn noted that the provisions of the Penal Code mentioned in paragraph 27 of the report in no way represented the domestic legislation that article 4 required to be adopted. Paragraphs 28 and 29 of the report, which described punishment for racist acts, gave only a single example of the sentencing of the perpetrators of such acts, which, as Mr. Diaconu had correctly said, was not significant. Since the crime punished had in any case been committed by terrorists against United States nationals, the example was even ambiguous.

20. Paragraphs 45-48 of the report, which described the implementation of article 7 of the Convention, did give useful information on the aims of the Educational Reform Act of 7 July 1994 - popular participation and cross-cultural education. However, they gave no details of any measures taken in support of the most disadvantaged ethnic groups in the areas of education and cultural development.

21. Mr. WOLFRUM, reverting to the question of education, asked, in view of the information contained in paragraphs 12 and 13 of the core document (HRI/CORE/1/Add.54), what had been done to facilitate the access of the

inhabitants of rural regions and indigenous people to primary, secondary and higher education. In that connection "education" must not be equated with "assimilation".

22. Referring to the impact study carried out with the participation of the region's indigenous organization (para. 18 of the report), he asked for a clarification of the somewhat vague use of the word "participation" and inquired whether the inhabitants of the indigenous territories were protected with regard to mining, which was a State prerogative, as they were in the case of road-construction and forestry.

23. Mr. BANTON, speaking as a member of the Committee, said that he was aware of the difficulties that some States encountered in providing figures and statistics. As stated in paragraph 8 of the General Guidelines regarding the Form and Contents of Reports, in the absence of such information the Committee would be happy to have qualitative data and subjective evaluations.

24. Some experts had raised the question of the inequality suffered by the ethnic groups, in education for example. It might be said that combating inequality did not come within the Committee's purview but, given that its mandate was to identify the causes of discrimination, it should consider cases in which those causes were to be sought in inequality in respect of education and development.

25. Mr. LECHUGA HEVIA, recalling that in 1992 the second Ibero-American Summit had approved the setting-up of a fund to promote the progress of the indigenous populations of Latin America and the Caribbean, asked what the results of that initiative had been in Bolivia.

26. Mr. CHIGOVERA, referring to paragraphs 10 and 11 of the report, pointed point out that although the Convention was indeed part of Bolivian domestic law, it was not of itself enforceable. He asked how it was implemented in practice.

27. Mr. PATIÑO (Bolivia) assured the Committee that practical measures had been taken in all the areas mentioned; he would give details the following Wednesday.

28. The delegation of Bolivia withdrew.

Tenth, eleventh, twelfth and thirteenth periodic reports of Brazil (CERD/C/263/Add.10; HRI/CORE/1/Add.53)

29. At the invitation of the Chairman, the members of the Brazilian delegation took seats at the Committee table.

30. Mr. VERGNE SABOIA (Brazil) said that the report of Brazil (CERD/C/263/Add.10), to which an independent research institute of the University of São Paulo, the Centre for Studies on Violence, had contributed, contained a comprehensive description of the measures and policies adopted up to May-June 1995. He would therefore limit himself to commenting on certain aspects and supplying more recent information of relevance to the work of the Committee.

21. Although Brazil had always repudiated racism and racial discrimination and relations between the various racial groups were not conflictual, the social and economic situation of the black or coloured population was generally worse than that of whites, and discrimination on racial grounds was not unknown. His Government had accordingly taken steps to improve the living conditions of blacks and coloured people, who accounted for 44.2 per cent of the population. Brazil had the second biggest black population in the world, after Nigeria. His Government attached great importance to improving the situation of that population, not only by recognizing the role of blacks in the practical and cultural construction of Brazil, but also by implementing policies which would guarantee equal access to the advantages of citizenship for everyone. It had already succeeded in bringing down inflation, the first victims of which were the poor, the majority of them black or coloured. It was currently endeavouring to carry out various important constitutional reforms in the fiscal, administrative and social security spheres, for example, and was also taking positive action in support of persons of African origin who suffered most from social inequalities.

22. On 20 November 1995, an interministerial working group, coordinated by Mr. Soutos, a member of the Brazilian delegation, had been set up to prepare policies for the advancement of the black population. Since February 1996, the group had been meeting regularly and had set up subgroups to define and implement policies in the following areas: information (race or colour would be taken into account in official documents and statistics, so as to provide a statistical basis for the formulation of policies specifically targeting the black population); labour and employment (measures to improve implementation of ILO Convention No. 111 and to combat discrimination in employment); communication (promotion of an appropriate image of blacks in the media and in official public relations and cultural programmes); education (promotion of non-discrimination and tolerance in the school system by including those issues in primary syllabuses and a choice of textbooks emphasizing the history and struggles of the black people in the construction of the Brazilian nation, without stereotypes or discrimination); international relations (dissemination abroad of an image of Brazil as a multiracial society and the expansion of relations between Brazil and the countries of Africa, in particular the Portuguese-speaking countries, and the Caribbean); agrarian policy (recognition of the Quilombo communities' right of ownership of the land they occupied and issue of property titles by the State); affirmative action (survey of the experience of other countries in that area and how it could be adapted to Brazilian society); advancement of black women (especially the question of reproductive rights); racism and violence (compilation of anti-discriminatory legal provisions at the federal and State levels, and possible formulation of new legislation); health (inclusion of race or colour in birth and death certificates, consideration of the health situation of the black population, formulation of a national programme to combat sickle-cell anaemia, which mainly affected the black population, and efforts to combat myoma and high blood pressure); black religion and culture (fostering of the cultural production of the black population and protection of Afro-Brazilian cultural and religious manifestations); sport (implementation, with the support of the National Institute for the Development of Sport, of projects geared to young blacks); and lastly, studies, research, science and technology (promotion of studies on race-related issues by higher academic and research institutions).

33. Among the mechanisms set up by the working group the sub-group for health had been the first to produce concrete results. Among other things, it had organized a working visit to the Kalunga community in Goiás (the largest and most isolated of the remaining groups of Quilombos); the aim had been to achieve a proper balance between sustainable development and the cultural preservation of the communities in question. Other noteworthy events had included the launching of a National Human Rights Plan of Action on 13 May 1996, the visit in June 1995 of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, cooperation with African countries (establishment of the Zone of Peace and Cooperation in the South Atlantic (ZPCAS) and the Community of Portuguese-Speaking Countries (CPLP)), and the admission of refugees from Africa, mainly Angola.

34. With regard to the indigenous populations, his Government was firmly committed to the demarcation of indigenous lands in Brazil, as provided for in the Constitution. More than one tenth of Brazilian territory - over 900,000 square kilometres - was set aside for the permanent usufruct of the indigenous population, totalling some 330,000 citizens, and the work of demarcation was continuing. The Government had also requested from the National Foundation for Indians (FUNAI) further information which took account of the opinions of anthropologists.

35. The National Plan of Action for Human Rights comprised specific activities in support of the indigenous populations, particularly with regard to health (adoption of a differentiated model taking into account the special features of the indigenous populations) and education (provision of specific and differentiated schooling respectful of the social and cultural values of each particular group), and also the dissemination of information on their rights through the media and in schools, lack of information being one of the causes of violence against indigenous peoples. Another goal of the National Plan was the ratification of ILO Convention No. 169.

36. Mr. de GOUTTES (Country Rapporteur), noting that Brazil had not submitted a report since March 1987, welcomed the resumption of the dialogue between that country and the Committee.

37. Unfortunately, he had been given only the English version of the thirteenth periodic report of Brazil. He nevertheless, recognized that that report, together with the core document of 10 January 1995 (HRI/CORE/1/Add.53), contained some in-depth, detailed and interesting information on the general demographic, social, political, economic and institutional framework within which the Convention was implemented. At the same time, however, some of the information on the implementation of articles 2-7 of the Convention seemed too theoretical, too exclusively juridical and limited to the analysis of enactments.

38. The country's demographic profile (dealt with in paras. 20-46 of the thirteenth periodic report and paras. 5-7 of the core document) was perhaps one of the main keys to the situation in Brazil and the attendant problems. In that connection, he noted that some of the figures in the thirteenth report were quite out of date: a total population of 147,305,524 according to the 1990 census (para. 20), whereas according to the most recent information, the population of Brazil was about 160 million. Did the Brazilian delegation

possess any more recent statistics? The data also needed to be harmonized: the figure in the core document was 146.1 million inhabitants, according to the 1991 national census.

39. A second important characteristic of Brazil was the ethnic and racial pluralism of its population (para. 20 of the thirteenth report, para. 6 of the core document). It would be useful to the Committee to have some additional explanations concerning several indicators: the increase in the coloured population resulting from the large number of interracial marriages - although the number of marriages between blacks and whites remained low, the increase in the urban population, the unequal distribution of racial groups throughout the country, the increased life expectancy - smaller among the urban population, and lastly the steady decline in the fertility rate.

40. Another feature of Brazil was the inequalities among ethnic and racial groups (paras. 23-46 of the report and accompanying statistical tables). He welcomed the frank treatment in the report of the disparities which still existed in all social fields despite the Government's efforts: school enrolment and levels of education, illiteracy rates, life expectancy, occupation, incomes, and family living conditions. He noted that the thirteenth periodic report and the core document referred to only five ethnic groups, (whites, coloureds, Negroes, Indians and, as a minor group, Asians), and said nothing about other categories of the population (immigrants, foreigners of various origins, for example). It would be useful if the Brazilian delegation would provide some information in that regard.

41. The 1995 core document also gave a good overview of Brazil's economic and political context. Paragraphs 8-13 referred to the stabilization programme launched in July 1994 to stem inflation (the Real plan) and important reforms in the economic field and in respect of social security and the civil service. Some of the figures given were very positive but more recent economic information drew attention to certain difficulties about which the Committee would like to have more details: difficulties related to the ongoing reforms with regard to tax policy, social welfare, the restructuring of the banking sector and agrarian reform; difficulties deriving from deteriorating public finances and the unfavourable economic situation in Latin America since the Mexican crisis; and lastly, difficulties inherent in poverty and social inequalities in general.

42. Paragraphs 14-24 of the core document contained a useful summary of Brazilian history and the country's political and administrative organization. The Committee would, however, like additional information on the political fallout from the recent social difficulties in Brazil: the ministerial reshuffling after the peasant disturbances and several reported massacres, particularly that of 17 April 1996 in Pará; pressure from opposition movements hostile to the reform programme, strengthened by the prospect of the October 1996 municipal elections and the 1998 presidential elections; incidents between the supporters of President Cardoso and leaders of the opposition, etc.

43. He would also like to know what point had been reached in the process of revising the Constitution. Bearing in mind the statement in the core document that fundamental rights could be subject to restrictions in a "state of defence" or "state of siege", he wondered in what circumstances such situations

could be proclaimed. Was it possible in such conditions to impose restrictions on all fundamental rights and freedoms? And how could the provisions on the state of siege or defence be reconciled with those in paragraph 4-IV of article 60 of the Constitution, which prohibited any amendment of the basic law serving to restrict individual rights? In addit to a recapitulation of legislation, it would also be desirable for the Committee to have specific information on the number and kind of the investigations carried out by the Council for the Defence of Human Rights o the Public Prosecutor's Department or by the General Office for the Defence Indian Rights.

44. The Brazilian periodic report contained several interesting pieces of information relating to the provisions of article 2 of the Convention, wher all States parties undertook to eliminate racial discrimination. With rega to the new Constitution of 5 October 1988, he noted the efforts of the Legislature to promote the right to racial and ethnic equality. He also dr attention to a number of innovations. The new Constitution made racism an imprescriptible crime, whereas before it had been regarded only as a crimin misdemeanour. Under the new text, the provisions regarding fundamental rig and guarantees became binding and immediately applicable to any private or public person and could no longer be the subject of any restrictive amendme

45. Paragraphs 54 and 70 of the report, enumerated a whole series of laws which, together with the Constitution, made it possible to combat or punish racism. The information given in those paragraphs was certainly useful to Committee but it needed to be backed by figures and specific examples of th effective implementation of those laws. The Committee would like to know t point reached in the proposed reforms mentioned in the report, in particula the bill to include in the Criminal Code a section on crimes against the equality and honour of persons and the two bills mentioned in paragraph 74 the periodic report, namely draft resolution 43 (1991) concerning the establishment of a congressional Human Rights Committee and Bill No. 4338/9 regarding mention of a person's colour in documents and public procedures. would also be interesting to know the stage reached with regard to the curr proposal to establish a National Commission for Equality of Opportunities within the Ministry of Justice (para. 75 of the report). And what was the situation regarding the Conselho do Programa Comunidade Solidária made up o representatives of civil society referred to in paragraph 75 of the report? Lastly, what had been the results of the establishment of a "special police station" for racial crimes referred to in paragraph 66 of the report, which supposed, according to that report, to have begun operating in June 1993?

46. With regard to measures taken against groups or bodies of a racial character, the Committee would like more information on the legislative provisions which made it possible to ban such organizations and punish thei members, the number of prosecutions brought and penalties imposed on such organizations, and the various types of racist organization which existed Brazil. Along with the neo-Nazi groups, were there other bodies, targetin the Indian, black or peasant populations, for example?

47. It would also be interesting to know whether steps had been taken to support organizations and movements combating racism, in particular the various anti-racist movements set up following recent racist incidents in which blacks, Jews and inhabitants of the north-east of Brazil had been

attacked. In addition, further details should be given on the role of the churches, the Bar and the trade unions in defending the poorest populations and the nature of their relationships with the authorities.

48. Welcoming the positive special measures adopted to protect and promote the most disadvantaged racial or ethnic groups (paras. 168 and 187 of the periodic report), he acknowledged that policy towards those populations was not easy to define, since it must reconcile two apparently contradictory objectives: preserving their culture and traditions and bringing about their gradual integration into national life. Nevertheless, the analysis of government action in paragraphs 175 et. seq. of the report made it possible to identify the priority areas: the protection of Indian lands coveted by mining corporations, prospectors and farmers of all kinds, a matter that was, moreover, linked to the protection of the Amazonian forest; the demarcation of those lands; the regularization of Indian property rights; the expulsion of clandestine settlers; the protection of Indian populations against intimidation, extortion and acts of violence by farmers, mercenaries in the pay of landowners, and even members of the military police in some cases; and the general social protection of Indian populations, in the fields of health and education, preservation of their language and integration into Brazilian society. The Committee therefore booked forward with interest to any information that the Brazilian delegation could provide about the future programme of action in support of the Indian populations. It would also like specific information on interventions by the authorities having special jurisdiction with regard to the protection of the rights of the indigenous inhabitants, and particularly federal judges. Another important question was whether the Brazilian Government had now ratified the ILO Convention concerning Indigenous and Tribal Peoples which, according to the periodic report, was currently being examined by Congress, or whether it was preparing to do so?

49. While noting the determination of the Brazilian authorities to combat the discrimination to which the black population continued to be subjected, the Committee would like to know more precisely what the Government envisaged doing in the future to deal with the main instances of such discrimination in the fields of education and employment.

50. Still in connection with article 2 of the Convention, the Committee would like specific information on the steps taken by the Government to ensure greater protection for the rights of peasant populations, as well as inhabitants of the favelas and street children.

51. Regarding article 4 of the Convention, paragraphs 54, 70, 134, 146 and 147 of the periodic report contained useful information on legislation designed to combat genocide, crimes of hatred, racist propaganda or the dissemination of racist ideology, discrimination against consumers, discrimination by public officials, and in particular the various offences of a racial nature targeted in Law No. 7,716 of 5 January 1989 especially discrimination in the field of labour and employment and refusal to provide services. However, the Committee did not yet have all the information it needed to be assured that Brazilian penal legislation was fully in accordance with the provisions of article 4 of the Convention as a whole. Thus, there

was no clear indication in the report whether or not there were laws punishing acts of racial violence or incitement to such acts, or insults or defamation of a racial nature.

52. With respect to article 5 of the Convention, paragraphs 86-147 of the periodic report indicated the many provisions of the Constitution and laws which guaranteed the exercise of the rights enumerated in paragraphs (a) to (e) of that article. Although it was complete from the legal standpoint, the list suffered from two shortcomings: first, being too theoretical, it did not enable the Committee to judge how the provisions were implemented. Specific examples of the effective implementation of certain laws (in particular, those concerning genocide, abuse of authority, racial discrimination by public officials, discrimination in employment, refusal to provide services in establishments open to the public, racial discrimination in the media and discrimination against consumers) would be welcome. In the case of the principle of equality of employment and access to public office, the Committee would like accurate statistics on the number of Indians and blacks in Congress, the civil service, the army, the police, the legal profession and education. It would also be interesting to know whether or not the fact that illiterates were not eligible indirectly prevented persons from the poorest sectors of society from standing for election and it would be useful for the Committee to have information on socio-economic indicators of non-integration for the most disadvantaged groups, in particular, in the case of Indians and blacks, the unemployment rate, the percentage of homeless, morbidity and mortality rates, the percentage of persons in prison, and the illiteracy rate. In that connection, what was the extent of phenomena such as delinquency, drug addiction, alcoholism, prostitution and suicide within those groups?

53. Despite the existence of much legislation on the protection of disadvantaged groups, many social inequalities remained in practice, as the periodic report frankly admitted. With regard to the civil rights enumerated in article 5, paragraph (d), of the Convention, paragraph 174 of the report noted that article 6 of the Civil Code, which had been drafted in 1916 and was still in force, considered Indians to be incapable of performing certain acts of civil life and subjected them to a regime of tutelage which, according to the article, would cease as they adapted to the country's civilization. Even though the 1988 Constitution now recognized the legal capacity of the Indians, article 6 of the Code should be repealed.

54. With regard to the right to security of person and protection against violence (Convention, art. 5 (b)), several information sources had drawn attention to intimidation, acts of violence and summary executions perpetrated against peasant populations, posseiros (landless peasants) and Indians by mercenaries in the pay of land owners, but also by death squads and even members of the military police. The Committee would like specific information from the Brazilian delegation on those particularly disturbing developments.

55. In connection with article 6 of the Convention, the periodic report contained some interesting information on the laws guaranteeing the protection of persons against racial discrimination, but there were few statistical data on the effective utilization of available remedies. Moreover, the figures provided were unusually low, for which there were two possible explanations: either the victims of the racism brought no complaints because they were not

sufficiently well informed of their rights or had no confidence in the police and the judicial system in their country, or the complaints were not successful because the police authorities did not attach enough importance to offences of a racial nature. Also, the figures were incomplete because they applied only to certain offences and dealt only with penal means of recourse. It was essential, therefore, that the Government should, in its next report, provide more complete statistics on complaints, investigations, cases not followed up, convictions and acquittals by the courts, on reparation granted in respect of all categories of offences of a racial nature, on the utilization of the other remedies mentioned in paragraph 41 of the core document, and on the number of interventions by the special police responsible for the prevention and punishment of racism and by the Council for the Defence of Human Rights. It would also be useful to know whether, in Brazil, the human rights associations or the groups defending certain segments of the population could themselves bring charges or use other means of recourse on behalf of persons whose interests they represented. Lastly, the Committee would like to know whether the Brazilian Government envisaged making the declaration provided for in article 14 of the Convention. By doing so, it would clearly demonstrate its determination to implement the Convention to the full.

56. With regard to article 7 of the Convention, the periodic report contained replies to several questions put by the Committee in 1987 concerning measures to protect and promote the cultural rights of the Indian and Afro-Brazilian populations. The Committee would note in that regard the many positive measures and initiatives that had been taken. Nevertheless, profound inequalities remained between whites, on the one hand, and blacks and Indians, on the other, in particular with regard to levels of literacy and school and university education. It was therefore very important for the Brazilian Government to keep the Committee fully informed of the efforts it continued to devote to the struggle against the racial and ethnic discrimination which still existed in those areas. It would also be interesting to have specific information on the steps taken by the authorities not only to promote the principles of the Convention, but also to bring to the attention of the public Brazil's periodic reports and the Committee's observations on them. And it would be advisable, as the Human Rights Committee had pointed out in its conclusions of 24 July 1996, for the Brazilian Government to inform the Committee on the Elimination of Racial Discrimination of the steps taken to promote human rights education and a spirit of interracial tolerance among those responsible for law enforcement, in particular members of the military police, who were too often involved in violent incidents.

57. Mr. van BOVEN said that he did not understand why a separate chapter of the report was devoted to the situation of the Indian populations, thus giving the impression that they were a separate group from the rest of the population. He wondered whether that approach was in accordance with the spirit of the Convention.

58. In addition, the Committee had received a great deal of information on legislative instruments but little on specific cases, in particular cases that had come before the courts. He hoped that succeeding reports would devote more attention to the judicial decisions to which such cases had given rise.

He was not sure that the laws in force corresponded to the provisions of the Convention, in particular those of article 6, referring to the reparation to which the victims of discriminatory measures were entitled.

59. Lastly, it would be interesting to know whether the Brazilian authoritie were willing to publish the reports prepared pursuant to the Convention and the concluding observations of the bodies set up under the various human rights instruments.

The meeting rose at 6 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1158th MEETING

Held at the Palais des Nations, Geneva
on Tuesday, 6 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-17677 (E)

The meeting was called to order at 10.10 a.m.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. The CHAIRMAN introduced the discussion by recalling the Secretary-General's report entitled "An Agenda for Peace", which mapped out a four-phase approach covering preventive diplomacy, peacemaking, peace-keeping and post-conflict peace-building. The Committee had played its part in preventive diplomacy through its early warning measures, in which it took a special interest, although its action had not been acknowledged in any of the High Commissioner's reports. With regard to peacemaking, the Committee was deeply concerned about the situation in Burundi, and would be interested to hear more about the Security Council's intentions and the possible role that the Committee might play. The Committee did not appear to have any distinct role with respect to peace-keeping, but there was a clear path for it to follow in post-conflict peace-building which it hoped to develop in the future.

2. Mr. AYALA-LASSO (High Commissioner for Human Rights) stressed the importance he attached to the work of the Committee. The recent tragic ethnic violence in Burundi and racial intolerance in many other parts of the world were a reminder of the vigilance needed in protecting and promoting human rights. The systematic monitoring of the implementation of the Convention was fundamental to the efforts of the United Nations in that regard. Apologizing for not having specifically mentioned the Committee's work in preventive diplomacy in his reports, he commended its early warning and urgent procedures and noted with satisfaction that the General Assembly had supported the Committee in its initiative to use such procedures to prevent serious incidents of racial discrimination and conflict from occurring rather than reacting to events after the fact.

3. Turning to developments within the Secretariat, he said that the very serious financial crisis in the United Nations had resulted in the freezing or abolition of posts and a reduction of resources throughout the Secretariat and the consequent reduction in documentation services for the Committee. The restructuring of the Centre for Human Rights was expected to result in more efficient operations, a more rational use of personnel and resources, and increased transparency and cooperation within the Centre. The Documentation Centre had now been established and a librarian appointed. He would welcome any suggestions by Committee members about the future work of the Centre, including the kind of documentation that should be acquired. Progress had also been made in computerizing the work of the treaty bodies, with a database on the Convention on the Rights of the Child already operational and work to begin shortly on computerizing data concerning the International Convention on the Elimination of All Forms of Racial Discrimination.

4. At the recent Second United Nations Conference on Human Settlements (Habitat II), the Assistant Director-General for Human Rights and he had endeavoured to place the right to adequate housing in the larger context of international human rights law. The Committee's statement to the Conference had certainly contributed to reaffirming the right to adequate housing as an established human right.

5. At its fifty-second session, the Commission on Human Rights had adopted a recommendation addressed to the seventh meeting of persons chairing the human rights treaty bodies to be held in September 1996 suggesting that they should consider the possibility for all States parties to prepare a single comprehensive report to all the committees and that thematic and specifically tailored reports should replace periodic reports, a suggestion which had not been endorsed by the Human Rights Committee at its recent session. The Commission had also invited the treaty bodies to identify the range of possible options for making technical assistance and advisory services available to States parties in order to help solve the problem of overdue or inadequate reporting.

6. With a view to promoting the universal ratification of human rights instruments, a regional meeting had been held in Addis Ababa in May 1996 to identify obstacles to ratification in 17 African countries and to devise strategies to overcome them. The Committee's Rapporteur, Mr. Chigovera, had been of valuable support in that endeavour. A similar regional meeting was to be held in Amman, Jordan, for States in the Asia and Pacific region. It was hoped that conclusions for further action could be drawn from those meetings.

7. He informed the Committee that the Commission on Human Rights had extended for three years the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

8. He noted that, with the recent accession of Malawi, there were now 147 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination. The number of States parties having accepted the individual complaints procedure under article 14 of the Convention still fell short of expectations, but, with the recent declaration by Luxembourg, was now up to 23.

9. He reiterated his strong personal support for the work of the Committee and his willingness to continue his dialogue with the Committee and with Mr. de Gouttes, who had been appointed to liaise with his office, in particular on the subject of early warning measures or urgent action.

10. Mr. ABOUL-NASR said he assumed that the High Commissioner for Human Rights had been briefed on the Committee's concern about grave human rights violations, including genocide, in certain countries, notably Burundi and Rwanda, but also Liberia, Somalia, the former Yugoslavia and others. He asked the High Commissioner, in particular, to brief the Committee on the prevailing situation in Burundi and the surrounding region, and specifically as to whether there was any truth in press reports that the United Nations was withdrawing its observers. If so, what were the problems faced by the United Nations? He also invited comment on accusations from Rwanda that the United Nations was failing in its duty. The High Commissioner's comments would guide the Committee in drawing up the statement it expected to make as part of its early warning and urgent procedures.

11. Quoting examples of lack of organization and administrative inefficiency within the Centre for Human Rights, he hoped that the restructuring and computerization process would be achieved quickly and would have the desired effect.

12. Mr. CHIGOVERA expressed serious misgivings about the approach adopted by the international community with regard to the situation in Burundi. As the High Commissioner had said, preventive diplomacy was intended to prevent serious incidents of racial discrimination and conflict from occurring rather than reacting to events after the fact. And yet, despite numerous statements, talks, appeals and resolutions, the international community was clearly reluctant to become involved and had made no concerted attempt to take action. Indeed, Burundi was being abandoned, just as Rwanda, and Somalia, had been. In Rwanda, while purporting to help the Rwandese people to find a lasting solution, the international community had supported one party to the conflict at the expense of the other and had in effect created anxieties and a desire for revenge. In view of the obvious failure of the approaches adopted so far, a new approach was needed, involving a meaningful effort to bring both sides to the negotiating table and promote reconciliation, as had been done, for instance, in Mozambique, Zimbabwe or Angola.

13. Turning to financing and administrative arrangements, he said that the Committee was one of the least well provided for of the human rights treaty monitoring bodies and he was concerned about the effects on its work.

14. Mr. de GOUTTES associated himself with Mr. Aboul-Nasr's comments about the effects of the restructuring process on the facilities available to the Committee and on its work, expressing particular concern about the problem of translating documents into all working languages.

15. On the subject of early warning and urgent procedures, he was in favour of direct contact between the Committee and the High Commissioner for Human Rights, although he would of course continue to ensure liaison with the High Commissioner's office. The priorities for such further discussion should emerge from the current meeting. The Committee had in fact already identified 13 countries where the situation seemed to merit urgent attention as a matter of priority, and it would be of interest to know which countries were regarded as warranting priority consideration by the High Commissioner.

16. Regarding the situation in Burundi, he drew attention to a highly informative report published by the office of the High Commissioner for Human Rights on the situation of human rights in Burundi and the activities of the observer mission there in the period from 19 April to 15 July 1996. The report described the alarming resurgence of acts of violence and the spread of the conflict throughout Burundi, the inadequacy of the means available to the five observers and the Bujumbura office, the courageous but inevitably limited investigations conducted by the observers, and the alarming conclusions of the mission with respect to the acts of violence committed by both sides, the functioning of the justice system and the situation in the prisons and detention centres. Since the publication of the report, however, two events had taken place, one being the massacre of 312 Tutsis at the refugee camp of Bugendena, following which the Security Council had asked for investigations to be carried out, and the other being the coup d'état of 25 July 1996, bringing Major Pierre Buyoya to power, and the establishment of a Government of national unity on 2 August. Those two recent developments prompted several questions and comments. What was the situation now with regard to the follow-up to the Arusha Summit of June 1996 and the proposal to establish a regional force composed of contingents from Tanzania, Uganda and Ethiopia?

What was the position of the new Government in that regard? Furthermore, the reactions of the international community to the new Government were fraught with ambiguity. It had been strongly condemned by the neighbouring countries, while the position of the non-African countries was more reserved, possibly in the hope that it afforded some chance of normalization. Finally, he referred to a joint message issued on 1 August by the Bishops of several central African countries denouncing political leaders who had set up private militias to shore up their authority and based their power on injustice, criticizing tribalism and the thirst for power observed in countries like Rwanda, Burundi, Somalia, Sierra Leone, Sudan and Liberia, and calling for an end to dissension and fratricidal warfare.

17. Mr. WOLFRUM said that the Committee was greatly concerned about the steady flow of refugees from Burundi to Rwanda. The Committee had been one of the first international bodies to warn of the growing ethnic tension in Burundi, as early as 1989. He asked the High Commissioner to give his assessment of the current situation in Burundi. He understood that the High Commissioner had prepared a report on the situation in the region, which had been rejected by the Governments concerned; he would be glad to hear more details about it.

18. Further, he asked the High Commissioner what action he planned to take to help the various ethnic groups of Burundi to live together in peace when the conflict was over. It was essential to establish a system of power-sharing which would provide security for both Tutsis and Hutus and ensure that neither side was able to take revenge upon the other.

19. He had noted with interest the High Commissioner's reference to the planned restructuring of the Centre for Human Rights, and hoped that the Committee would have time to discuss the issue fully.

20. Mr. GARVALOV said that the Committee had a moral duty to express its views on the developments in Burundi. It could not condone the massacres which had taken place by remaining silent. The President of the United Nations Security Council had merely called upon the parties in Burundi to work towards reconciliation, but it was essential to work out a solution and impose it through concerted action using all possible means; the High Commissioner could surely contribute to that task, perhaps by investigating ways of supporting regional efforts to resolve the conflict.

21. He had been encouraged by the High Commissioner's praise of the Committee's early warning activities. The Committee had the necessary expertise to provide valuable information to the High Commissioner and the Secretary-General, and was most willing to do so. In that connection, he drew attention once again to situations of potential danger, such as Kosovo and Macedonia, where preventive action was essential.

22. Mr. SHERIFIS said that one way in which the High Commissioner could help the Committee would be to inform States which were not yet party to the International Convention on the Elimination of All Forms of Racial Discrimination about the Convention and the work of the Committee as the Committee had no official contact with States until they had acceded to

the Convention. The High Commissioner's office could also help with the implementation of the Committee's decisions, both general and specific, particularly in areas relating to non-party States.

23. The situation of refugees who had been driven from their homes because of ethnic conflicts came within the Committee's sphere of competence under the Convention. The Committee was currently drafting a general recommendation on the right of refugees and displaced persons to return to their homes and reclaim their property, which it hoped to adopt at the current session. He asked the High Commissioner to consider organizing a seminar on that issue, possibly as part of the activities for the Third Decade to Combat Racism and Racial Discrimination.

24. Mr. RECHETOV said that world opinion increasingly considered regional organizations, such as the Council of Europe, to be more effective agents in the field of human rights than the traditional United Nations human rights bodies, including the Committee. Indeed, some States concentrated the efforts they made in the human rights field on such regional organizations instead of fulfilling their legal obligations under United Nations instruments, such as submitting periodic reports to the Committee. Perhaps the High Commissioner could consider ways of strengthening the Centre for Human Rights in order to incorporate the good points of the regional human rights bodies and encourage States to fulfil their legal obligations.

25. The High Commissioner had suggested that States should submit a single comprehensive report to all the human rights treaty bodies. He was categorically opposed to any such suggestion; the Committee already received reports which were quite clearly copies of those prepared for other bodies, such as the Human Rights Committee, and they were simply not specific enough to meet the Committee's requirements. In his opinion, such a move would not be successful unless the legal procedures for the submission of reports were amended.

26. Acts of terrorism, which were often connected with ethnic conflicts, were an increasing problem, a fact he hoped the High Commissioner would bear in mind in his work.

27. Finally, he wished to draw the High Commissioner's attention to the problem of Kosovo. Several years before, the Committee had sent a mission to Kosovo which had enjoyed the support of both the Serbian and the Albanian authorities. It was generally acknowledged that, if war broke out in Kosovo, the situation would be even worse than in Bosnia. He could not understand how the international community could concentrate on Bosnia and ignore the situation in Kosovo, which could be kept from reaching crisis point by appropriate preventive action.

28. Mr. SHAHI said that the situation in Burundi was beyond the competence of the Committee and indeed of the entire United Nations human rights machinery. The only body competent to act was the Security Council but it had refused to do so. Fortunately, however, regional forces, such as the east and central African countries which had met at the Arusha Summit in July 1996, were determined to act. The Committee and other human rights bodies concerned

with the prevention of discrimination should urge the international community to provide financial and logistical support for the intervention proposed at the Arusha Summit, which was the only way to prevent further massacres. He hoped that the High Commissioner would add his influential voice to the campaign.

29. Mr. AYALA-LASSO (High Commissioner for Human Rights) said it was true that the United Nations was not always able to find swift and effective solutions for international problems. Some cases, such as that of Somalia, had tarnished the Organization's reputation as a peace-keeper. The respective fields of competence of various parts of the United Nations system were very clearly defined. He himself was not empowered to act in matters of international peace and security, but could only offer practical suggestions and support to the competent body, the Security Council. The Security Council, in turn, had no authority under the Charter of the United Nations to consider human rights issues, except in very special cases such as that of the Kurds of Northern Iraq, where violations of human rights had been deemed to infringe peace and security.

30. He had tried to react to the emergency situation in Burundi as he had in Rwanda, where the field operations conducted by his office had won the approval of the Rwandan Government and non-governmental organizations, despite the initial problems. He had established an office in Bujumbura in June 1994, which was working to reform the justice system, provide human rights training for the military establishment, promote racial tolerance by means of radio programmes and generally encourage the different ethnic groups to talk to one another instead of shooting.

31. In January 1995 he had suggested that up to 35 observers should be sent to monitor human rights in Burundi, at a cost of US$ 3.5 million for one year. He had eventually been granted the sum of US$ 400,000, and had sent five observers in March 1996, firstly to assess the practicability of monitoring the human rights situation at all and, secondly, to do the actual monitoring. They had concluded that human rights monitoring was both valuable and possible. Their findings had been presented in a confidential document to the diplomatic community in Geneva at the end of July; it was not an official report of his office. The press had claimed that the report blamed the army for acts of violence, rather than the rebels. However, it had actually said that all sides were guilty of acts of violence. Clearly, improving the human rights situation was not the whole answer: there must be a political solution as well. Many peace initiatives had been launched by the Organization of African Unity, former President Julius Nyerere of Tanzania and others, in some of which he had been personally involved.

32. He did not wish to speak about the recent coup d'état in Burundi because the United Nations had already taken an official position on the matter. He was determined to continue his operations in Burundi, even if other agencies withdrew. Even small numbers of human rights monitors made potential victims feel safer and potential aggressors feel that they were being watched.

33. Prevention and early warning activities such as those conducted by the Committee were very important and deserved the support of the entire

international community. A task force met every week to discuss policy issues with the Secretary-General, and information from human rights mechanisms such as the Committee was vital to its work. The United Nations had been widely accused of passivity, not least by the media. However, his Office was trying to act and react to situations as quickly as it could. That was particularly true in Africa, the present focus of operations. In Europe, the Office's attention was directed towards Russia, Georgia and the Balkans. In Bosnia and Herzegovina, it was working particularly to provide training on the ground, assistance to the High Representative, Mr. Carl Bildt, and humanitarian aid.

34. The decision to appoint Mr. de Gouttes to liaise with the Office was very welcome, as was direct contact with the Committee as a whole. Further exchanges would be arranged as and when necessary.

35. The CHAIRMAN thanked the High Commissioner for Human Rights for addressing the Committee and his willingness to collaborate with it.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth, eleventh, twelfth and thirteenth periodic reports of Brazil (CERD/C/263/Add.10; HRI/CORE/1/Add.53) (continued)

36. At the invitation of the Chairman, Mr. Vergne Saboia, Mr. dos Santos, Mr. Pinta Gama and Mr. Espinola Salgado (Brazil) resumed their places at the Committee table.

37. Mr. GARVALOV commended the report of Brazil for its candour and comprehensive analysis of the situation in Brazil. However, certain areas remained unclear. Paragraphs 9 and 10 did not fully explain what the status of the Convention was in relation to internal legislation, or whether it could be directly invoked before the courts. Although paragraph 18 provided some information on the administrative, economic and financial sanctions imposed on persons found guilty of racial discrimination, it was not clear whether all 26 states in Brazil provided for such sanctions. It also seemed that the prohibition of racial discrimination varied from state to state, with some prohibiting it in education, some in culture and so on. The delegation should, therefore, shed light on the situation.

38. Paragraph 23 referred to differences in levels of schooling for white, coloured and black children. What was the Government doing to improve the situation for coloured and black children?

39. According to paragraph 45, although there were no legal impediments, few Negroes reached the top ranks of government, the armed forces, or private enterprise. Why was that?

40. Paragraph 46 mentioned the Government's commitment to reducing material inequalities between racial groups through the adoption of non-discriminatory policies. However, it did not explain exactly what they were or what the Government was doing in practice.

41. Information on the reform bill for the Special Part of the Criminal Code was also needed, as were assurances that the law, when passed, would be consistent with paragraph 4 (b) of the Convention. The same was true for draft bill No. 4,366/93, mentioned in paragraph 72 of the report.

42. The Constitution of Brazil stipulated that, to stand for election, a candidate had to be a member of a political party, which seemed very restrictive and called for explanation. Further information on requirements for candidates for the offices of President and Vice-President of the Republic would also be welcome because, from paragraph 98 of the report, it seemed that the only stipulation was that candidates should be over 35 years of age.

43. Finally, he asked why so few cases of racial discrimination were filed in Brazil. Was it because Brazilian society was permissive, because acts of racial discrimination were not registered and therefore went unpunished or because judicial procedures were complicated and prohibitively expensive?

44. Mr. DIACONU said that paragraph 8 of the report stated that, under the 1988 Constitution, Brazil's international relations were governed by the principle of the prevalence of human rights. It was not, however, clear what that meant in practice, particularly given the country's federal structure. Similarly, the description in paragraphs 18 and 19 of laws adopted in the various states prohibiting racial discrimination did not explain what happened in states without such legislation and whether in those cases federal law prevailed.

45. The report spoke frankly of problems in the areas of employment, the distribution of national wealth and inequality between ethnic groups. When dealing with those problems, it should be remembered that the Convention was concerned not just with deliberate acts of discrimination, but also with discrimination arising out of economic and social circumstances, and suitable measures should therefore be taken to ensure observance of article 1.

46. Paragraph 54 listed laws, codes and statutes that established the criminal nature of racial discrimination. However, it appeared that organizations and acts of racial discrimination committed by them were not covered by legislation. A greater effort therefore needed to be made to ensure compliance with article 4 (b) of the Convention.

47. He regretted the fact that the situation of indigenous populations had been dealt with in a separate section at the end of the report and that there was a lack of information on the territories they inhabited, how the borders were defined and whether they had enough land to be able to maintain their traditional way of life and cultural identity.

48. Mrs. SADIQ ALI, referring to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on his mission to Brazil in 1995 (E/CN.4/1996/72/Add.1), asked what was being done to improve the occupational and social mobility employment prospects and wages of Afro-Brazilians, and to eradicate the inherent discrimination they faced in recruitment, as described in paragraph 48 of that report. Similarly, what measures were being taken to change the mainly white-dominated media and to improve the salaries of black

women, particularly domestic servants, and their conditions of employment? Finally, paragraphs 53 and 54 of the report stated that more black women were sterilized than white women, and that some black women might even have been sterilized without their knowledge, and therefore their consent, when giving birth. She asked if the situation had changed since the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations had drawn attention to it.

49. Mr. WOLFRUM said that he was disappointed that the report had dealt with the situation of indigenous populations in a separate chapter. Moreover, the population breakdown in paragraphs 20 to 22 was unclear and did not indicate whether Indians had been included with coloured people. While the policies on indigenous peoples described in the report were highly commendable on paper, there was a nagging doubt about how they were being implemented in practice. It had been mentioned in the oral presentation that one of the relevant constitutional provisions was under review. How did that process work?

50. There had been reports that Indians who wanted to return to their traditional lands had met with resistance from farmers and miners, for example. He would welcome information on what the Government was doing to protect Indians from what were often violent attacks and on how legislative provisions for their protection were being implemented.

51. The Civil Code mentioned in paragraph 174 dated back to 1916 and its article 6 considered Indians to be relatively incapable of performing certain acts of civil life. That provision was clearly at odds with the Convention and should therefore be amended.

52. Paragraph 176 mentioned the spread of disease among the Indian population when their much-coveted lands were exploited by prospectors or by big industry. Details of what was being done to protect the Indian population from disease should be provided.

53. Mr. YUTZIS said that, despite the very progressive nature of article 231 of the Brazilian Constitution, the problems of the indigenous populations would not be solved without proper demarcation of their lands and the establishment of proper legal titles thereto. In that connection he asked about the status of the presidential decree recognizing the property rights of indigenous communities, which was referred to by the Special Rapporteur in paragraph 62 of his report (E/CN.4/1996/72/Add.1).

54. As the demarcation of land was a complex and costly business requiring considerable political will and financial resources, he wondered what resources were available to the National Indian Foundation (FUNAI) and other similar organizations for that purpose.

55. Mr. VERGNE SABOIA (Brazil), replying to points raised, said that state constitutions could in no way restrict any of the rights embodied in the Federal Constitution, but could go beyond them by providing more specific protection. The Brazilian Constitution made the provisions of international human rights instruments directly applicable in Brazil without the need for specific legislation.

56. Brazil's provisions on states of emergency were in full conformity with the International Covenant on Civil and Political Rights. The process of declaration involved certain legislative measures including the consent of Congress.

57. Criminal law in Brazil was federal. There was no state penal regime as in some federations.

58. Mr. DOS SANTOS (Brazil), speaking as Coordinator for the Inter-Ministerial Working Group for the Development of the Black Population, said that Brazil's black population did not constitute a minority but, with some 70 million persons, accounted for almost half the population.

59. President Cardoso himself had stated that one of the problems of the black population was that it did not enjoy full citizenship, a fact which was clear from the statistical tables in Brazil's report. The aim of the Inter-Ministerial Working Group was to put that problem firmly on the national agenda.

60. The difficulties of the black population had started with the abolition of slavery. The subsequent lack of employment opportunities and educational difficulties had built up a negative image of the black population which the blacks themselves had accepted. Their low self-esteem, together with the discrimination practised by the white population and the media's largely white orientation, exacerbated the problem.

61. To put an end to that vicious circle, and to transform Brazil into a more just and equitable nation, special policies were needed in employment, education and communications. The Inter-Ministerial Working Group was dedicated to that end.

62. Mr. VERGNE SABOIA (Brazil) said that the figures given in the report were the official figures from the 1990 census. The population of Brazil now stood at some 160 million. Since the 1940s the increase in the coloured population had been matched by a corresponding reduction in the black population, due to miscegenation. Other categories such as immigrants and foreigners were included in the statistics according to their ethnic and racial origins.

63. The fact that there were more marriages between coloureds and blacks than between whites and blacks was probably because, generally speaking, people tended to marry within or close to their own social class.

64. With regard to the question of the progress of constitutional reform, raised by Mr. de Gouttes, he said that, when the core document had been prepared in 1994, a broad reform of the Constitution had been attempted but had not proved to be politically feasible, and the present Government was tackling the problem on a case-by-case basis. Some aspects of the Constitution were being modernized, particularly in the areas of economic and fiscal policy, and reforms were under way in social security and administration to ensure a greater degree of control and predictability in government expenditure and revenue.

65. There appeared to have been some misunderstanding about the provisions of the Constitution being challenged in court. The procedure for the demarcation of land had been challenged and additional measures had been required to guarantee that the process was not challenged in the Supreme Court. The constitutional provisions on indigenous rights had not been amended in any way and no amendment was being considered.

66. With regard to Mr. de Gouttes' question about the economic situation of the country and the consequences of the Mexican financial crisis, he confirmed that any effects which that crisis might have had in Brazil had largely been overcome.

67. Agrarian reform had been a government priority particularly since the violent incidents in rural areas. Those events would be dealt with at greater length later on. The Government was intensifying its programme for the expropriation of rural property, particularly portions of large estates not currently being exploited economically, in order to settle landless peasant families. Some 40,000 families had been settled through the scheme in 1995 and the target was to settle a further 60,000 in 1996 and 200,000 families over a four-year period. A Ministry of Agricultural Reform had been established to promote those policies.

68. The problem of rural violence was being addressed in the human rights plan of action, which would focus on obtaining more detailed information on where the violence occurred and its causes.

69. The reform of the Criminal Code referred to in paragraph 71 of the report was now with the Commission of Justice of the Chamber of Deputies. Draft Bill 4,366/93, aimed at reinforcing the provisions of the Criminal Code in respect of racism, was still under consideration by the Chamber of Deputies.

70. The Human Rights Committee referred to in paragraph 74 of the report had been established in the Chamber of Deputies and had become a very active promoter of human rights initiatives in Congress and in the country generally. The Senate was now considering establishing a similar committee.

71. The National Commission for Equality of Opportunities referred to in paragraph 75 of the report had been transformed by the establishment of a working group on the elimination of discrimination in employment and the Inter-Ministerial Working Group for the Development of the Black Population. One of the positive measures in education, in addition to the introduction of the concept of non-discrimination and tolerance in school syllabuses, had been the publication by the Ministry of Education of a guide containing an assessment of all school textbooks available in Brazil, based on criteria established by educational and human rights experts for the exclusion of any books which contained stereotyped images of blacks and indigenous peoples or which expressed prejudices in respect of race, colour, age, sex or any other form of discrimination incompatible with the provisions of the Federal Constitution. Over 70 textbooks had been withdrawn from circulation as a result. A book on the life of a prominent black leader of runaway slaves who

had fought the Portuguese in the seventeenth century had been published by the Ministry of Culture and Education and distributed to schools throughout the country.

72. The special police unit for handling race-related crimes which had been established in São Paulo was a pilot project that had been less successful than the corresponding initiative for violence against women.

73. There had been two notable cases involving punishment for racial acts. In the first case, a state electrical company had been ordered to re-employ a person it had dismissed on racial grounds and to compensate him for any damages suffered. In the second case, a notorious singer and composer, together with his recording company, had been denounced by the Public Prosecutor of Rio de Janeiro on the basis of information provided by black movements for the infringement of article 20 of Law 7716/89 on incitement to racial discrimination. The company's records had been seized pending a final judicial decision.

The meeting rose at 1 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1159th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth to thirteenth periodic reports of Brazil (continued) (CERD/C/263/Add.10; HRI/CORE/1/Add.53)

1. At the invitation of the Chairman, the members of the Brazilian delegation resumed their places at the Committee table.

2. Mr. VERGNE SABOIA (Brazil), continuing to provide the details the experts had requested, said that, with regard to the violence against landless peasants and other vulnerable groups, the Government had acted within the Constitution in punishing the guilty parties, and had brought the persons responsible - the officer and the police and military personnel - for the events in Eldorado dos Carajas in the State of Pará before the military courts.

3. With reference to street children, he recalled that a member of the military police had been given the heaviest sentence in the Criminal Code for his share in the Candelaria massacre and that the Human Rights Committee and the Special Rapporteur on extrajudicial, summary or arbitrary executions had been so informed.

4. There were no racist organizations in Brazil. It was true that there were gangs of youths whose behaviour was sometimes racist and isolated separatist groups in the south, but they could not be said to have the support of the population. He pointed out that two persons associated with separatist movements were being prosecuted in Rio Grande do Sul, one for attempting to section off part of the national territory in order to set up an independent State and the other for incitement to racial hatred.

5. In reply to a question on the participation of the churches and society, he said that the churches, and the Roman Catholic Church in particular, were very active in the national debate on racial matters. The three major trade unions, for their part, had black groups who made such issues a matter of special study, and the Bar Association was determined to promote human rights with the help of a special commission of black lawyers.

6. He recognized that the situation of black people on the labour market was not an enviable one. That was because the qualifications of black workers often did not correspond to market requirements, in part because of their very history of enfranchisement and in part because of their lack of technical training. The recently created Inter-Ministerial Working Group was endeavouring, in consultation with the Working Group on the Elimination of Discrimination, to put together preferential measures in employment, taking advantage of the experience gained in other countries.

7. The tables contained in the report showed clearly that the black population was penalized in all areas. However, since race and colour were not taken into account in most of the investigations, the presence of blacks

in the various sectors of society could not be correctly quantified. The Inter-Ministerial Working Group was in the process of rectifying that shortfall. Despite such lacunae, it was well known that black seats in Congress could be counted on the fingers of two hands and that there was just one black minister and one black rector and two black Federal state governors. In the army, however, there were considerable numbers of blacks, except among the higher-ranking officers. The tables also showed the underprivileged situation of blacks in respect of income and education. The data on unemployment, imprisonment rates, prostitution or suicide - all of which were factors of social exclusion - showed that the percentage of blacks and coloureds in those categories corresponded overall to the percentage of the population which they represented.

8. In reply to the question on the publication of information concerning the report, he said that 5,000 copies of the report were being printed. With regard to whether domestic legislation conformed to the Convention, he referred to the documents available in the Centre for Human Rights and asked the Committee to point out any gaps.

9. Referring to the situation of the indigenous populations, he explained that it had been studied separately because those populations were not integrated into Brazilian society overall. The indigenous population, in other words, persons defining themselves as indigenous, numbered approximately 160,000, or 0.2 per cent of the total population; it was therefore difficult to integrate them into general statistics. Two thirds of them lived in the Amazon jungle and a great many had never had any contact with the rest of the population. They were therefore not ready to mingle with non-indigenous groups; they were also vulnerable and should receive special protection. The 1988 Constitution, which recognized their right to cultivate their own particular characteristics, while protecting them under the same heading as other citizens, did not foresee that, in exchange, they would lose their indigenous status and identity. In giving them the legal capacity to enable them to protect their rights and their interests, it had to some extent rescued them from their regime of tutelage, but, when the Federal Government had consulted the indigenous communities in 1991 on the timeliness of modifying its policy towards them, the great majority had said that they were in favour of keeping their protected status, which added special collective cultural, social and land rights to the rights of all Brazilians and in no way affected their political rights, although, to date, there had only been a single indigenous "non-emancipated" Federal deputy.

10. In reply to the question on violence against the indigenous population, he quoted figures for murder and attempted murder and various acts of aggression, including acts against the indigenous heritage, which showed that such acts were most frequently committed by non-indigenous persons. The most alarming figure, however, was that for suicide, particularly among the Guarany-Kaiowa and the Ticuna.

11. Much needed to be done to improve the situation and particularly to raise life expectancy, which was only 46 years. However, measurable progress had been made and the overall growth of the indigenous population, now approximately 1.7 per cent, was greater than that of the rest of the

population of Brazil. The development of the Yanomamis in northern Brazil clearly illustrated that trend. With assistance from the National Indian Foundation (FUNAI) and five NGOs, the Yanomamis had their own medical centres distributed throughout their territory. The death rate, particularly the infant death rate, and the prevalence of malaria had decreased and the population was growing at a rate of 3.7 per cent, or approximately double the national average.

12. Noting that the Committee had taken a very close interest in the question of indigenous lands, he said that they accounted for 11 per cent of the territory of the Federation. The land had been demarcated to take the rights of its original populations into account and must ensure the survival of its inhabitants in a collective context. However, the land earmarked for them belonged to the Federation, which had to make considerable efforts to protect it, since it was and would continue to be a target for invasion; the situation would improve only when other social problems, particularly agrarian reform, had been solved.

13. He reminded the Committee that he had already discussed the question of the health of the indigenous populations and added that the health system from which those populations benefited took their special way of life into account.

14. With regard to the requirement of belonging to a political party in order to be a candidate in elections, he pointed out that the restriction was not unreasonable in a country where it was extremely easy to found a party, even quite a small one, and recalled that there had been close on 10 candidates in the last presidential election. Since Brazil needed strong political parties rather than small groups whose concern was to defend disparate interests, the organization of political parties had to be strengthened.

15. The question of nationality and the criteria to be met to be elected as President or Vice-President had been raised. That was one of the few cases in which the candidate had to be a native Brazilian, and not merely born in Brazil, where _jus sanguinis_ and _jus solis_ co-existed. Naturalization was an easy formality and naturalized Brazilians were excluded only from a small number of posts, for example, in the army and the diplomatic service.

16. He had been asked for an explanation of the meaning of the constitutional provision which gave respect for human rights a predominant role in foreign affairs. That provision expressed Brazil's desire to contribute to the improvement of the human rights situation throughout the world.

17. The idea of taking preferential measures on behalf of blacks and indigenous people was worth considering.

18. Referring to the favourable image which needed to be given to blacks and the indigenous populations, he said that there was one television channel which promoted their education and that contacts had already been established with the private media with a view to their participation in that effort.

19. Concern had been expressed about the fact that employers were requesting their female employees to have themselves sterilized. It was true that some employers had done so, but that had never been a concerted policy and the ILO was no longer receiving complaints in that regard.

20. In reply to a comment made that morning, he said that the table of the different races to be included in Brazil's next report would give a breakdown of the indigenous populations.

21. The question of the Quilombos, the descendants of runaway black slaves who had survived in isolated regions, would gradually be settled by means of the land grants for which the Constitution provided, with the deeds of ownership. Isolated though they were, the Quilombos had some links with society and should be able to work in cooperatives.

22. Mr. SHERIFIS, noting that, unlike other countries, Brazil did not hesitate to use the word "Negroes", asked - although he did not advocate the practice - whether Brazil had a system of quotas which allowed the non-white population to take part in the country's political life in proportion to their numerical representation in the population. He pointed out that paragraph 99 of the report stated that, in order to be eligible, a person must be literate and have minimum qualifications. That provision was not in keeping with paragraph 5 (d) of the Convention and, although he admitted that Government employees and members of Parliament should have some education, he would like to know exactly what Brazil meant by "minimum qualifications".

23. Mr. ABOUL-NASR, referring to the question of land ownership, which was very important to the Committee, asked for details about the lands "dedicated" to the indigenous population. He was surprised that the land had not been given to them, since they had been the first to occupy it and he would like to know how they lived and what they had the right to do on that land. In his opinion, if they were the owners, they would probably not be attacked so often and it would therefore be unnecessary to spend large amounts of money to protect them.

24. He would also like to have details on what was meant by the term "non-emancipated indigenous person" and by what authority emancipation had been defined.

25. Mr. VERGNE SABOIA (Brazil), replying to Mr. Sherifis, said that, in Brazil, the term "Negro" was not pejorative. There was no system of ethnic quotas in public office or in Parliament, but only affirmative action to establish objectives for particular groups. The literacy level required for election to office was very low, since a person needed only to be able to read and write.

26. Referring to Mr. Aboul-Nasr's question, he said that the rights of indigenous people over their traditional lands were recognized, but to give them the right to sell their land or to dispose of it in any other way would be contrary to their interests because they were likely to be exploited. Indigenous peoples could obtain benefits from their land (logging, for example). Nothing could be done without the authorization of the National Indian Foundation (FUNAI) and without their own consent. The apparent

restriction on the rights of ownership of indigenous persons was thus a form of protection. Similarly, the term "non-emancipated indigenous persons" referred to their relative inability to perform certain acts; for example, although indigenous persons could go before the courts and assert their rights, they still had to be helped. That, too, was a form of protection.

27. The Brazilian delegation withdrew.

Eight periodic report of the Republic of Korea (CERD/C/258/Add.2; list of foreign nationals residing in the Republic of Korea (document without a symbol, distributed in the meeting in English only))

28. At the invitation of the Chairman, the members of the delegation of the Republic of Korea took places at the Committee table.

29. Mr. Joon-Hee LEE (Republic of Korea), introducing his country's report (CERD/258/Add.2), assured the Committee that all comments made by its members on the report would be carefully examined by the Korean authorities for reflection in policies for the promotion and protection of human rights in Korea.

30. The questions raised during the consideration of the seventh report in 1993 and the Committee's concluding observations had been given due attention in the preparation of the eighth report. According to Korean law, the Convention was directly applicable in the Republic of Korea on the same footing as Korean domestic law, although that did not exclude the possibility of the adoption of further legislative measures in future for the effective implementation of the Convention. Since the Republic of Korea was ethnically homogeneous, the question of racial discrimination had never been an issue. For that reason, article 11 (1) of the Constitution did not contain any specific reference to racial discrimination when it prohibited discrimination on the grounds of sex, religion and social status. It was accepted, however, that the list was not exhaustive and that, under that article of the Constitution, racial discrimination was strictly prohibited in the Republic of Korea. In paragraph 11 of the report, the number of foreign nationals residing in the Republic of Korea was given in table form. The table distributed to the members of the Committee, entitled "Foreign nationals residing in the Republic of Korea", was an updated version and gave a breakdown of the category of "Other nationals" contained in the table in paragraph 11.

31. With regard to article 4, the report maintained the position of the Republic of Korea that existing constitutional safeguards and domestic legislation were sufficient for its full implementation. If the situation should so require in the future, the adoption of additional legislation might be envisaged.

32. In 1993, the Committee had stressed the importance of providing human rights training and education to law enforcement officials. In order to take account of the comment, during 1995 alone, 900 human rights awareness sessions had been organized and attended by over 30,000 judicial officers and police. As from 1997, the syllabus of the Judicial Research and Training Institute

would include a two-year course on international human rights law. The Ministry of Justice published and distributed reference material in Korean on the international human rights conventions.

33. In order to contribute to the effective implementation of the Convention, the Government was considering establishing an independent national human rights commission. It had commissioned a study of the national institutions of other countries, particularly from the point of view of practical procedures (mandate, budget, personnel, facilities and management). The Government had decided, in principle, to recognize the Committee's competence under article 14 and the necessary measures would be taken in the near future.

34. Measures had been taken on behalf of foreign workers in Korea to ensure the timely payment of wages, the safe remittance of money to home countries, compensation in the event of accident and protection against mistreatment. Undocumented foreign workers also received compensation in the event of accident and legal protection. Persons living in certain provinces were not subject to discrimination in terms of education, medical care or employment opportunities; any apparent differences were merely due to the specific characteristics of various provinces and cities. There had never been any institutional discrimination against persons of mixed parentage, although it could not be denied that they had suffered from some degree of prejudice in the past, but that was less and less the case.

35. An ongoing campaign known as "segyewha" or "globalization" was intended to bring the Republic of Korea up to international standards in many areas, particularly that of human rights. The "segyewha" policy was based on a sense of community with mankind and responsibility with regard to major world problems, such as human rights, the environment, refugees, poverty and global security. In the three years since the inauguration of the civilian Government in February 1993, there had been positive developments in the human rights situation. The new Government had demonstrated a firm will to improve the situation by bringing Korea's legal and institutional apparatus into line with international human rights standards.

36. There was room for improvement, as in any other country. However, the Republic of Korea hoped that the comments and contributions made by the Committee would help it ensure greater respect for human rights and establish itself as a responsible member of the international community.

37. Mr. DIACONU (Country Rapporteur) said that the State party was to be commended on its readiness to engage in dialogue and on the regular submission of its reports.

38. He was disappointed that there were no constitutional or legislative provisions to prohibit discrimination on grounds of race, colour or national or ethnic origin. Article 37 (1) of the Constitution was not adequate in terms of the obligations laid down by the Convention. In 1993, it had been recommended that the State party should remedy that omission. He asked whether the Government had reconsidered the situation and whether it intended to take the necessary measures. It was also not enough to state (art. 6 (1) of the Constitution) that the Convention had the same legal validity as

domestic laws. He asked what would happen in practice in the event of conflict between domestic law - or its interpretation - and a provision of the Convention and whether a law enacted subsequent to the Convention could constitute an exception from one of its provisions.

39. With reference to the implementation of article 2 of the Convention, paragraph 14 of the report stated that "existing laws and practices are sufficient for a complete implementation of the Convention". He asked what practices were referred to, whether a judicial or administrative practice existed for the implementation of the Convention, and whether the Government of the Republic of Korea was intending to adopt legal provisions to meet the requirements of article 4 in the near future. With regard to the implementation of article 5 of the Convention, the State party should have described the measures it had taken in all the areas referred to in order to ensure equality of rights without distinction as to race, colour, or national or ethnic origin. Paragraph 23 of the report stated that the Government was taking measures of that nature, but the only measure actually quoted (para. 24) was in a labour context. He asked what the situation was in respect of economic, social, civil or other rights.

40. Impressive numbers of remedies were available in the case of the infringement of rights by government agencies (para. 26). He asked whether there had been cases in which such remedies had been used for infringements of provisions of the Convention. A number of schools for foreigners existed in the Republic of Korea (para. 30), and that in itself was a good thing. He asked whether they were public or private schools, whether the State contributed to their financing or whether they were financed exclusively by the respective communities, what the languages of instruction were and how many schools also provided secondary education. It might also be noted that the number of schools for foreigners had decreased slightly to 56 in 1995 compared with 58 in 1992, although, in the interim, the number of foreigners had nearly tripled from 51,000 to 133,000. He asked how the phenomenon was to be explained, whether the number of schools was sufficient and whether there were schools for all of the categories of foreigners mentioned in the list circulated at the start of the meeting.

41. As far as migrant workers were concerned, the report contained only one reference to foreign "trainees" employed in industry. However, according to Korean non-governmental organizations, there were allegedly more than 160,000 foreign workers in the Republic of Korea, of whom only 8,000 had their papers in order, 52,000 were in Korea for technical study programmes and more than 100,000 were illegal. Only trainees recruited by medium-sized enterprises benefited from the protection given by the Government, while those recruited by large companies investing abroad had no protection at all. The information contained references to low wages, unduly long working days - 12 to 16 hours - and other infringements of the rights of those workers by their employers. The Government should take steps to ensure that there was no discrimination between different categories of foreigners and between foreigners and Korean nationals in employment and related areas. As full an explanation as possible should be provided. Lastly, he noted with satisfaction that the Government of the Republic of Korea intended to follow up the Committee's recommendations to the full and that it also intended to make the declaration referred to in article 14 of the Convention.

42. Mr. GARVALOV said that he also found the recent initiatives taken by the Government of the Republic of Korea encouraging. Like Mr. Diaconu, he stressed that the general provisions ensuring the equality of all citizens contained in the Constitution did not exempt States parties from the obligation of taking the special and concrete measures provided for in article 2 (2) of the Convention.

43. With regard to foreigners residing in the Republic of Korea, the table which had been circulated at the start of the meeting and which usefully supplemented the table contained in paragraph 31 of the report seemed to group the citizens of the different countries listed (United States, China (Taipei), People's Republic of China, Japan, etc.), but he was inclined to think that, for the Japanese and Chinese, that was not the case. Many of them had been born in the Republic of Korea, of parents and grandparents who themselves had been born there, but they were placed in a different category and treated as foreigners because they were not citizens of the Republic of Korea. Citizenship was governed by jus sanguinis and only those who could prove their Korean family origins were entitled to it. Persons of Chinese or Japanese stock could not provide such proof and a priori therefore suffered from ethnic discrimination.

44. Noting that the measures referred to in paragraph 23 of the report were probably administrative, he asked what legal and judicial measures had been taken by the State party to combat racial discrimination. Paragraph 26 (iv) once again referred to the fundamental rights of citizens, a concept which excluded all persons who were not of Korean origin, but had been born in Korea and had been living there for several generations. Such a distinction between citizens and non-citizens was undeniably discriminatory.

45. Mr. de GOUTTES noted with satisfaction that the introductory statement by the delegation of the Republic of Korea contained new and extremely interesting information which did not appear in the State party's periodic report. It referred to a plan to set up a human rights commission, the Government's intention to make the declaration provided for in article 14 of the Convention and new texts which could be adopted to prohibit racist acts if the situation so required. There were still some shortcomings, however. Racial discrimination was not explicitly prohibited in the Constitution or in article 5 of the Labour Standards Act. The assertion that the Constitution, legislation and practice in force "are sufficient for a complete implementation of article 4 of the Convention" (para. 19 of the report) was not enough to satisfy the Committee. The fact that the Republic of Korea was demographically homogeneous did not exempt it from taking certain measures. Even in a country where racism did not exist, criminal legislation played an important preventive and educational role.

46. Recalling that a question raised by the Committee in 1993 on the subject of discrimination against, inter alia, the children of foreign workers and persons living in regions other than the south-east of the Republic of Korea had still not been answered, he said he hoped that the State party would provide the Committee with details in that regard.

47. Mr. CHIGOVERA, referring to the question whether article 11 (1) of the Constitution, as quoted in paragraph 6 of the report, was in keeping with the principles of the Convention, noted that paragraph 7 of the report gave the impression that article 37 (1) of the Constitution filled the gaps in that article, whereas it merely stated that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution". (para. 7). It thus did not offer any explicit guarantee.

48. Paragraphs 8 and 9 of the report indicated that, under the Constitution, "the Convention on the Elimination of All Forms of Racial Discrimination has become part of domestic laws". It should, however, be recalled that the Convention did not apply automatically and that States parties had to take steps to implement its provisions and ensure that they could be invoked directly in the courts.

49. He noted that paragraph 19 of the report reproduced almost word for word the comments which had already been made in the previous report and that the Committee had already pointed out that the State party had not supplied information on the effective implementation of the Convention, regretted in particular the lack of criminal law measures to prohibit racial discrimination. He also noted that the delegation of the Republic of Korea had replied at the time that the State party would take such measures if cases of racial discrimination arose. It should be remembered that the Convention's main focus was preventive. Anti-discrimination measures were important, but they could not replace prevention. It might therefore be asked whether the State party's current position was in keeping with the spirit of the Convention.

50. Mr. ABOUL-NASR said that he could not agree with the representative of the Republic of Korea that racial discrimination had never existed in his country, since Koreans had been its victims not long previously during their country's occupation by Japan. Even if the Republic of Korea was an ethnically homogenous country, it was homogenous where religion was concerned because there were followers of Confucianism and Christians, in addition to Buddhists.

51. He noted with satisfaction in its statement that the delegation of the Republic of Korea had rectified the comments on article 4 of the Convention contained in paragraph 19 of the report and had indicated that the State party was planning to adopt criminal laws to punish racial discrimination.

52. Noting that ethnically, the Chinese formed a single group, he said that the distinctions between members of that group made in the report, which referred to Chinese from Taipei, were unacceptable.

53. Mr. SHAHI recalled that, in paragraph 23 of the seventh periodic report, the State party had announced that it was about to make the declaration provided for in article 14 of the Convention. The eighth periodic report contained no mention of the matter. In its introductory statement, however, the delegation of the Republic of Korea had reaffirmed that the State party intended to make the declaration. He therefore hoped that the Committee would receive good news in that regard in the very near future.

54. Mr. Joon-Hee LEE (Republic of Korea) said that his delegation would prefer to answer the Committee's questions at the following meeting.

55. The delegation of the Republic of Korea withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Meeting with the High Commissioner for Human Rights

56. The CHAIRMAN suggested that, since Mr. de Gouttes had wished to know, prior to his meeting with the United Nations High Commissioner for Human Rights, whether the members of the Committee had other matters to raise with him, the draft resolution on Burundi should be discussed at that meeting. The members of the Committee would note that, the more the Committee directed its efforts towards prevention, the more it needed information on the work of other United Nations bodies. The current restrictions on documentation were an obstacle to meeting that need. That was perhaps another issue which should be discussed with the High Commissioner.

57. Mr. RECHETOV said that Mr. de Gouttes should be given an opportunity to discuss any matter with the High Commissioner for Human Rights that he considered to be important. If the Committee adopted that practice, it should grant the same measure of freedom to the various members of the Committee responsible for liaison with other bodies. However, if the aim was to make a statement to the High Commissioner on behalf of the entire Committee, especially with regard to administrative and financial issues, the approach should be different.

58. Mr. WOLFRUM said that, during his morning meeting with the High Commissioner, he had discussed the Secretary-General's report on the restructuring of the Centre for Human Rights (A/C.5/50/71). He was extremely sorry that the Committee had learned its fate only when it had read that document. A new branch responsible for racial discrimination had been set up. Communications would henceforth be the responsibility of the Support Services Branch, and that was surprising to say the least. The Chairman of the Committee should at least have been informed before such a decision was taken. Even though it could not change any of the decisions which had been taken, the Committee should consider the report carefully and give its point of view.

59. Mr. GARVALOV said that the Committee should avoid giving instructions to its members who were responsible for liaison with other United Nations bodies, since it might not be able to agree on the content of those instructions.

60. He did not endorse the High Commissioner's narrow view of his own mandate. A conventional approach could not be adopted when massacres and genocide were taking place, and the Committee should make that clear to the High Commissioner.

61. Mr. de GOUTTES said he agreed with the Chairman that the Committee had to have access to as much information as possible. He would therefore be sure to inform the High Commissioner that the current documentation problems were preventing the Committee from doing its work properly.

62. He did not need instructions on Burundi. He only wished to know whether the Committee had other points to raise to the High Commissioner. With regard to the role which the Committee should play in the context of the crisis in Burundi, he anticipated two phases: a preliminary information phase and an operational phase. As to the first, the dialogue with Mr. Ayalo Lasso had partially met the Committee's information needs. For the operational phase, however, the Committee would have to determine what its specific contribution should be to United Nations action in Burundi. He recalled that the Committee had proposed its services for the human rights training of all law enforcement officials (magistrates, police, military personnel, etc.) and had offered assistance for the legislative reform and reconstruction of the State.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING PROCEDURES (agenda item 4) (continued)

Situation in Burundi

63. Mr. WOLFRUM, introducing the draft decision on Burundi (CERD/C/49/Misc.2/Rev.1, distributed at the meeting in English only), drew attention to several amendments. In the fourth preambular paragraph, the reference to respect for the Burundi Constitution had been deleted. The beginning of operative paragraph 1 had been reworded to include the idea that the Burundi parties should respect the Constitution. In paragraph 4, reference would also be made to cooperation with the High Commissioner for Human Rights, while paragraph 5 would refer to the repatriation of both refugees and of displaced persons. In paragraph 7, the reference to leaders would be replaced by a reference to the parties. The end of paragraph 9 might also be amended in order to refer to financial and logistical support from the member countries of the European Union, for example.

64. He hoped that the Committee would be able to adopt the draft decision, whose wording reflected the Security Council's statements on Burundi and the joint communiqué of the second Arusha Regional Summit on Burundi, held on 31 July.

65. Mr. ABOUL-NASR said that he did not clearly understand why the third preambular paragraph referred to serious violations of the Convention, since the Committee's mandate was to combat all violations, whatever their degree.

66. Mr. van BOVEN and Mr. DIACONU drew attention to the fact that, in accordance with its mandate, the Committee could initiate an urgent procedure to prevent serious violations of the Convention.

67. Mr. de GOUTTES, referring to the concern of some members that the draft decision was too political, said that, in order to emphasize the idea of emergency prevention, a paragraph should be inserted in the operative part to read:

> "Recalls its offers of expertise and assistance for human rights training for law enforcement officials for legislative reforms and for the reconstruction of the State."

68. Mr. ABOUL NASR said that the text proposed by Mr. de Gouttes should be placed at the end of the preamble, where the word "Recalls" would be replaced by the word "Recalling".

69. With regard to paragraph 3, he wondered whether, by calling on the Burundi parties and not the Government to investigate the massacres, the Committee was not to some extent giving all parties the right to investigate and to punish.

70. Mr. CHIGOVERA said that the text of paragraph 3 was completely unrealistic. It had been stated at the Arusha Regional Summit that Burundi did not have a legitimate Government, but only parties in conflict to which no serious suggestion of undertaking investigations could be made. It was difficult to understand how the Committee could at one and the same time recommend national dialogue in paragraph 1 and call for punishment in paragraph 3. It was already known how such suggestions had been interpreted in the cases of Rwanda and Burundi.

71. Mr. WOLFRUM said that there was no contradiction between national reconciliation and the punishment of the perpetrators of crimes; in the case of Burundi, it was unthinkable that no mention should be made of the massacres in the hope of a reconciliation. An identical problem had arisen in his own country, Germany. Efforts should therefore be made to come up with a compromise text, without concealing that aspect.

72. Mr. de GOUTTES said that Mr. Aboul-Nasr had been right to say that it would be difficult to ask all the Burundi parties to prosecute the perpetrators of the crimes. However, since the Committee could not ignore the question of prosecution, the text should perhaps be amended so as to request the judicial authorities to conduct the investigations. The approach was neutral and would also make it possible to stress the need to strengthen and protect justice in Burundi, which, as everyone knew, was in a deplorable situation.

73. Mr. ABOUL-NASR said that, even in a concern for national reconciliation, massacres such as those being perpetrated in Burundi could not be left unpunished. That part of the draft decision was all the more important in that it reflected article 4 of the Convention, which made racial discrimination punishable by law and whose provisions were binding.

74. Mr. CHIGOVERA said that, in the case of countries such as Burundi and Rwanda, the context of the African continent must be taken into account and solutions that were valid for other countries in other contexts should be avoided. The Committee had a choice between reconciliation and punishment. If, as Mr. Aboul-Nasr had pointed out, there was a close link between operative paragraph 3 and article 4 of the Convention, the wording should be amended, since the international community was not a party to the Convention.

75. Mr. ABOUL-NASR said that operative paragraph 4, which dealt with the problem of refugees, should also refer to neighbouring countries.

76. The CHAIRMAN suggested that paragraph 5 might be combined with paragraph 9 since both dealt with the problem of support.

77. Mr. SHAHI said that the two paragraphs should remain separate. One related to assistance by the international community for refugees and displaced persons, while the other referred to financial and logistical support by the United Nations.

78. Mr. ABOUL-NASR said that he would like paragraph 7 to refer not only to peace and stability, but also to justice.

79. Mr. SHAHI, referring to paragraph 8, said that the documents prepared by the Secretary-General and the statements made at the two Arusha Regional Summits referred to the dispatch of a multinational force as a last resort to prevent further genocide.

80. Mr. ABOUL-NASR said that he was not sure whether reference should be made to the dispatch of an international or multinational peace force or to the observers to whom the High Commissioner for Human Rights had referred at the preceding meeting and who were still in the country.

81. The CHAIRMAN said that the members of the Committee who had further comments to make on the draft decision should give them directly to Mr. Wolfrum.

The meeting rose at 6 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1160th MEETING

Held at the Palais des Nations, Geneva
on Wednesday, 7 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth periodic report of the Republic of Korea (CERD/C/258/Add.2) (continued)

1. At the invitation of the Chairman, the delegation of the Republic of Korea took seats at the Committee table.

2. Mr. Joon-Hee LEE (Republic of Korea) recalling the comments of the country rapporteur, Mr. Diaconu, and other members on the lack of any specific reference to race or racial discrimination in the Constitution and other legislation of the Republic of Korea, said that the criteria cited in those instruments were merely examples. Racial discrimination was strictly prohibited in accordance with the principle of equality enshrined in the Korean Constitution and other relevant laws, even if it was not mentioned specifically.

3. With regard to possible contradictions between the Convention and domestic law and the status of the Convention under Korean domestic law, he said that, if provisions of domestic law contradicted those of the Convention, the general principles of laws including the lex posteriori rule or the principle of the precedence of special law, would apply. The provisions of the Convention were further protected by the Korean Constitution, which guaranteed and confirmed the fundamental and inviolable human rights of the individual.

4. Members had raised a number of questions concerning paragraph 14 of the report (CERD/C/258/Add.2), which dealt with article 2 of the Convention. He reiterated that the existing laws were an effective means for prevention and prosecution of acts of racial discrimination. Different spheres of activity were governed by different laws: for example, article 5 of the Labour Standards Act banned discrimination on the grounds of nationality and articles 307, 309 and 311 of the Penal Code laid down penalties for acts of defamation and insult, including those of a racist nature.

5. No cases of alleged racial discrimination had ever been brought before the courts. For that reason, the Republic of Korea considered that there was no compelling need for new legislation.

6. The Committee had inquired about the "existing practices" for the protection and promotion of human rights referred to in paragraph 14 of the report. The Government provided human rights training for government officials engaged in the administration of justice and had appointed a human rights officer in every police station in the country. A centre for the investigation of alleged human rights violations had been established in May 1993. Complaints centres for foreign workers had been established in every immigration control centre: in 1995 they had dealt with 1,722 complaints, covering unpaid wages, compensation for injury and medical treatment. The Ministry of Justice actively publicized all the international human rights instruments by publishing the texts and organizing seminars and an annual human rights week.

7. Regarding the implementation of article 4 of the Convention, he said that the Convention was already part of Korean law and could therefore be directly invoked in the courts. The Government therefore saw no compelling necessity to adopt new domestic legislation. However, it did not exclude the possibility of adopting new legislation in the future in order to reflect the provisions of the Convention more effectively. His country was taking steps to improve its implementation of the Convention, as shown by its plans to establish a national human rights institution and its intention to make the declaration provided for in article 14, paragraph 1 of the Convention.

8. With regard to the number of foreign schools in the Republic of Korea, he had some more recent figures than those given in paragraph 30 of the report. There were now 36 Taipei Chinese schools, with 3,594 students: that figure was 517 less in than 1992, and three schools had closed. There were 13 American schools with 5,240 students, 2 British and 2 Japanese schools and 1 German school. Eighteen foreign schools provided secondary education. Foreign schools were run and financed entirely by the foreign community concerned.

9. Members had noted that, while the number of foreigners, particularly Filipinos, in the Republic of Korea had increased substantially, the number of foreign schools had not shown a corresponding increase. That could be explained by the fact that most of the newcomers were workers and trainees who were not accompanied by children.

10. The employment of foreign workers was not permitted except in certain occupations. However, foreign workers who were legitimately employed enjoyed the same legal protection as Korean workers. Illegal foreign workers were subject to deportation under Korean law, but were nevertheless entitled to the minimum legal protection, against non-payment of wages, for example. Special measures adopted in February 1994 ensured that foreign workers who had suffered occupational injuries since February 1991 would receive compensation on equal terms with Korean workers. In cases of non-payment of wages or physical assault which were duly reported to a regional labour office, foreign workers were entitled to compensation for loss or damage on the same basis as Korean workers.

11. The Republic of Korea had adopted an "industrial technical training system for foreigners" in 1991. The directives referred to in paragraph 24 of the report requested employers to take into account the special situation of foreign trainees in respect of training contracts, health and safety and compensation for industrial injuries. The Government was considering a system of work permits to legitimize the employment of foreign manual labourers and provide them with appropriate legal protection.

12. With regard to the remedies available to individuals whose rights were infringed by government agencies, he said any cases of racial discrimination would be dealt with under the normal procedures of the Korean legal system: however, no such cases had ever been brought to court. Incidentally, the terms "individuals", "persons" and "citizens" in the report should be taken to mean all people, regardless of citizenship.

13. While there had never been institutional discrimination against children of mixed parentage in the Republic of Korea, it was true that they had suffered from a certain degree of public prejudice in the past. However, people were much more tolerant now. The Government provided financial support for the living expenses and education for Koreans of mixed parentage.

14. The ethnic Chinese community in the Republic of Korea was protected in accordance with international law and treaties in the same way as everyone else in the country. The principle of jus sanquinis did apply in Korea, but it was relatively simple to obtain Korean nationality: persons eligible for naturalization included those who had resided in the Republic of Korea continuously for more than five years, who were over 20 years old and able according to the laws of his own country, who maintained good conduct, who had their own means of support, or who were stateless or due to lose their existing citizenship.

15. The statistics concerning foreign nationals residing in the Republic of Korea (para. 11 of the report) differentiated between Taipei Chinese and Chinese from the People's Republic of China because the latter group had not been listed in the statistics until 1993.

16. The declaration provided for in article 14, paragraph 1 of the Convention would be made in the very near future.

17. His delegation felt the consideration of its report had been an informative and valuable exercise. His country would do its utmost to continue the effective implementation of the Convention, his delegation would willingly provide in writing any other information requested by the Committee.

18. Mr. GARVALOV thanked the representative of the Republic of Korea for his replies. However, he was still not reassured about the situation of the ethnic Chinese and Japanese in the Republic of Korea. The representative had referred to a naturalization procedure by which foreign nationals could gain Korean citizenship: however, that surely left scope for discrimination, since ethnic Koreans were automatically entitled to citizenship, and non-citizens were ineligible for employment in the public service.

19. Mr. CHIGOVERA asked for a specific example of the way in which the Convention could be invoked before the domestic courts, since the Government had not passed any legislation specifically related to racial discrimination. For example, how would an individual or the State pursue a prosecution for alleged racial discrimination under article 4 of the Convention?

20. Mr. DIACONU (Country Rapporteur) thanked the representative for his replies. He noted that the ethnic Chinese and Japanese communities had lived in the Republic of Korea for decades and deserved to be treated on the same basis as ethnic Koreans. They certainly should not be treated as migrant workers. What exactly was their status?

21. He noted with satisfaction that the Government had not excluded the possibility of adopting new laws to reflect the provisions of the Convention. Such laws would be particularly valuable in improving the implementation of

article 4 of the Convention. He welcomed the frank and constructive dialogue which had taken place and the goodwill shown by the Korean delegation.

22. Mr. ABOUL-NASR asked whether the Chinese community and other distinct ethnic groups in the Republic of Korea wished to retain their own ethnic identity or to become assimilated into the Korean population.

23. Mr. Joon-Hee LEE (Republic of Korea) said that, as far as he was aware, the ethnic Japanese residents of the country had experienced no particular problems. He would research the matter further and provide the Committee with written information if it so wished. Most of the ethnic Chinese community wished to retain their own nationality rather than taking Korean nationality. They were protected under international law and treaties, like all other foreign nationals. He did not believe that their status had been a serious social issue. His country would provide more details in its next periodic report if the Committee so wished.

24. In respect of possible conflicts between the Convention and domestic legislation, he said that, when the Government was considering acceding to an international instrument, it first checked its domestic legislation for possible conflicts and, if any were detected, decided whether to lodge a reservation to the article concerned or to amend its domestic law, either before accession or immediately afterwards. His delegation was aware of the Committee's views concerning the Republic of Korea's implementation of article 4 of the Convention, and had passed them on to the relevant authorities. The Committee must realize that amending fundamental national legislation such as the Constitution or Penal Code was a long and complicated process. Nevertheless, he would once again convey the Committee's comments to his Government.

25. The CHAIRMAN thanked the representative of the Republic of Korea for the goodwill shown by his delegation, and said that the Committee had thus completed the first part of its consideration of the eighth periodic report of the Republic of Korea.

26. The delegation of the Republic of Korea withdrew.

Eighth to twelfth periodic reports of Bolivia (CERD/C/281/Add.1; HRI/CORE/1/Add.54) (continued)

27. At the invitation of the Chairman, Mr. Lema Patiño, Mr. Quispe Callisaya, and Mr. Suárez Avila (Bolivia) took places at the Committee table.

28. Mr. LEMA PATIÑO (Bolivia) said that from 1825 until 1952, Bolivia's mixed-race (*mestizo*) minority group had ruled the country and its mostly indigenous population along semi-feudal lines. After 1952, the system had changed radically and indigenous populations, along with the rest of the population, had been given the right to vote, and had benefited from agrarian and education reform.

29. However, Bolivia remained a poor country in which illiteracy rates were high and basic services were often lacking. Although that led to a certain kind of discrimination, it was not based on race but born of poverty. In

fact, none of Bolivia's institutions or legislative provisions tolerated or accepted racism. Since 1952, Bolivia had signed the major international instruments dealing with human rights, discrimination and indigenous peoples.

30. Serious unemployment had prompted many people who had formerly worked in the mines to move to the country, which had meant that the production of coca leaves had increased. Bolivia was in constant contact with the High Commissioner for Human Rights and had provided satisfactory explanations of human rights violations that had taken place during the Government's efforts to stamp out the production of coca leaves.

31. Combating discrimination in a country like Bolivia was an ongoing task and relied heavily on the willingness of Government and society to cooperate fully. In recent months, a certain amount of progress had been made in the fight against discrimination, in the penal code for example. The need to criminalize racism and other forms of discrimination had been recognized, although Bolivian legislation did not provide for punishment for racism or racist acts as such. To that end, Bolivia would welcome technical assistance from the relevant United Nations bodies, and a comparative study of legislation providing for sanctions against racism would be of great practical value. Bolivian legislation provided for equality and rejected any form of discrimination.

32. Bolivia recognized that there were circumstances which called for the urgent criminalization of racism, for example in cases of genocide or in societies where racial discrimination was part of an ideology. Bolivia had been spared the horrors of genocide, had never harboured racist ideologies and was free of racist organizations or sects. However, discrimination in its most subtle, and none the less violent, forms did exist. It therefore recognized the need to be able to call on its Penal Code.

33. With regard to the elimination of discrimination in administrative posts, it was clear from the Foreign Service Act, a copy of which would be made available to the Committee, that staff were appointed on the basis of professional merit and ability.

34. On the question of the hierarchy of laws, the Constitution was the supreme legislative instrument, followed by laws passed by Parliament. International instruments approved by the National Congress had the same status as national laws. Any conflict between laws of equal status was settled by the courts. The priority of the International Convention on the Elimination of All Forms of Racial Discrimination over other laws of equal status was guaranteed, being one of the few such instruments with the status of law.

35. As to whether the Convention could be invoked in a court of law, he said that under Bolivian legislation the provisions of the Constitution concerning fundamental freedoms and such instruments as the Universal Declaration of Human Rights and the Convention, could be applied without supplementary legislation.

36. With regard to education and bilingualism, the Educational Reform Law (Law No. 1565) which had been promulgated in 1994 was aimed at strengthening

the identity of indigenous peoples as well as the national identity as a multi-ethnic and multi-cultural nation. Education was recognized as both a right and a duty of all Bolivians. Indigenous peoples' education boards in various parts of the country would participate in formulating and supervising the implementation of education policy, with particular regard to bilingualism. A multi-lingual teacher training college had been established in Riberalta. Education was considered monolingual when instruction was given in Spanish and another indigenous language was taught, and bilingual when the teaching was given in one of the indigenous languages with Spanish as a second language. The Educational Reform Law did not cover university education, the reform of which would be a matter for the following administration.

37. The Popular Participation Act recognized indigenous and rural organizations and laid down procedures for attaining legal status, so that they could conclude contracts, control the funding of community projects and so on. Following the elections of December 1995, more than 40 per cent of municipal councillors and mayors were members of indigenous communities.

38. With regard to indigenous legislation, a legislative strategy had been adopted as part of the 1994 constitutional reform process to establish a new legal order reflecting Bolivia's multi-ethnic and multi-cultural society. As a result all laws, with the exception of the procedures established in Law No. 1257, had to provide explicitly for the rights of indigenous peoples. The 1994 constitutional reform had finally established them as peoples with their own identity and culture who played a central role in the country's social, economic and political life.

39. The Popular Participation Act, defined indigenous peoples as communities predating colonization with their own history, structure, language and culture and rural communities as the basic units of the rural social structure consisting of nuclear or extended families which shared a territory in which they pursued their economic, social and cultural activities. All definitions in recent legislation had been inspired by the Indigenous and Tribal Populations Convention, 1989, of the ILO, which Bolivia had ratified in 1991.

40. The rapporteur had not made reference in his report to the Law on Domestic Violence which had been passed in 1995 and was consistent with the Convention on the Elimination of All Forms of Discrimination against Women. It was of particular benefit at the present time to indigenous women living in urban areas who could report abuses to the relevant offices, but efforts were being made to extend its scope to the rural areas.

41. Consideration was currently being given to a National Land Institute and Land Bill which would establish an efficient institutional structure to manage and introduce very modern land resources, ensure sustainable development and guarantee the rights of the indigenous populations. The recently adopted Forestry Act recognized the exclusive right of the indigenous communities to exploit the forests on their land. Indigenous communities were also granted a preferential right to concessions for the exploitation of forest resources and to use the forests in a traditional way without further authorization.

42. Other legal reforms included the establishment of a subsecretariat for Human Rights within the Ministry of Justice to promote human rights and

guarantee the implementation of international treaties and conventions. Laws had been passed abolishing imprisonment and corporal punishment for debt, and prohibiting the imprisonment of elderly people and juveniles for minor offences. In its campaign against drug trafficking, the Government had, through a bail bond law, eliminated the unconstitutional aspects of Law No. 1008 on controlled substances, and special offices had been opened to defend and promote the human rights of people in areas in which coca cultivation was being eradicated.

43. With regard to criminal procedure reforms, the Ministry of Justice had approved a reform bill which was currently being examined by various bodies. The new procedure would promote recognition of the customary law of the indigenous peoples, including the right to use their own languages in courts of law and in other legal matters. A public rural defence service had also been established to provide legal defence for prisoners who did not have the services of a lawyer.

44. More recently, legislation had been passed in the area of maternal and child health providing for free medical care for all women during childbirth and for the child up to the age of five. Article 60 of the Constitution had also been amended, to allow the people more direct participation in elections to parliament, by removing the need for candidates to be party members. That change was expected to enhance the participation of women in political affairs.

45. A pensions scheme was being established which would cover all Bolivians over the age of 18.

46. With regard to environmental issues, the recent law on administrative decentralization granted greater participation in the environmental study approval process to the departmental and municipal authorities, in which the indigenous populations were represented.

47. With regard to the Zarate-Wilka case, the sentence passed by the judge might well have been based on the major crime of terrorist assassination, although racism had undoubtedly been a factor influencing the decision.

48. In May 1996 in Paris, the Bolivian Government had been given the full backing of the international community for its rural development plan designed to improve the conditions of rural populations.

49. The CHAIRMAN, referring to the reform of penal legislation in Bolivia, said that States parties almost inevitably had to implement article 4 of the Convention through their penal code, but had a greater choice of means of implementing article 5. Particularly where discrimination was subtle, it had frequently been found more appropriate to legislate under the labour code or the civil code.

50. Mr. LECHUGA HEVIA (Country Rapporteur) welcomed the new measures in Bolivia and expressed the hope that the Committee would be kept informed of any new measures as they were adopted.

51. The Bolivian delegation withdrew.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 8) (continued)

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (CERD/C/49/Misc.3)

52. Mr. WOLFRUM, introducing the draft recommendation, said that he had attempted to take into account the concerns expressed by Mr. Sherifis, Mr. Aboul Nasr and Mr. Shahi. The Committee had not dealt with the situation of refugees in the past, but he felt that the issue was relevant, since the right to return to one's country was enshrined in article 5 (d) (ii) of the Convention. In operative paragraph 1 of the draft, he had added the stipulation that any such return should be voluntary. In operative paragraph 2, he had reflected Mr. Sherifis' point that refugees and displaced persons had the right to reclaim their property or receive compensation for its loss. Operative paragraph 3 stated that refugees and displaced persons had the right of participation in public affairs and access to public services on their return to their homes, since those rights were often denied in practice.

53. The CHAIRMAN suggested that the last sentence of operative paragraph 1 should be amended to read: "... such return shall be voluntary and unhindered".

54. Mr. van BOVEN said that as a matter of principle, it would be wise to consult the Office of the United Nations High Commissioner for Refugees (UNHCR) over the draft general recommendation and ensure its support. There was some doubt as to whether the substance of the text was compatible with general recommendation XX (48) on article 5 of the Convention. It should also be made clear that operative paragraph 3 related to article 5 (c) of the Convention.

55. Mr. ABOUL-NASR, supported by Mr. DIACONU, agreed that the Committee should consult UNHCR before proceeding with the draft general recommendation. Every effort should be made to avoid the temptation to issue recommendations on every individual aspect of racial discrimination.

56. Mr. CHIGOVERA said that the section of the draft general recommendation from the second sentence of operative paragraph 1 to the end of operative paragraph 2 dealt with matters that did not fall within the competence of the Committee.

57. Mr. RECHETOV said that there was always a host of United Nations bodies dealing with issues, such as Burundi, on which the Committee had adopted or intended to adopt a general recommendation. It would be impossible to consult each and every one of them whenever a general recommendation was on the agenda. The Committee needed to deal with the question of refugees if it wanted to move ahead in finding solutions to ethnic conflicts. There was room for improvement in the wording of the proposed text, but it would be quite wrong to object to the principle of a general recommendation on refugees.

58. Mr. WOLFRUM suggested that the member of the Committee appointed to liaise with UNHCR should approach that organization and find out if there was

any objection to the general recommendation. However, as a general rule, the Committee should not tailor its work to suit other United Nations bodies. The draft general recommendation was fully within the Committee's mandate in that it referred to "the displacement of persons on the basis of ethnic criteria". Hopefully, with a few changes, the text could be adopted by consensus.

59. Mr. de GOUTTES said that he had raised the issue of refugees, the protection of displaced persons and the return of their property with the High Commissioner for Human Rights. The High Commissioner had stressed the importance of the question and asked to be kept informed of the Committee's discussions and decisions in that regard. The text before the Committee should be supported.

60. Mr. GARVALOV said that he would endorse the text if it were amended slightly, particularly to include a reference not just to "military conflicts" but also to non-military conflicts, which also forced many people to flee their homes.

61. Mr. SHERIFIS said that UNHCR should be consulted or informed about the draft general recommendation through the liaison officer. The text did need to be revised before a final decision could be taken.

62. Mr. RECHETOV suggested that the text refer to ethnic conflicts in the first preambular paragraph, either instead of or in addition to "military conflicts". It should also find room to refer to the return of refugees and their property.

63. Mr. DIACONU said that operative paragraphs 1, 2 and 3 could apply equally to all refugees, whatever the reason for their situation. If the general recommendation was to be of any use at all, it had to deal specifically with people who had become refugees as a result of ethnic problems.

64. The CHAIRMAN said that the Committee would take a final decision on the draft general recommendation at a later date.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Draft recommendation on Burundi (CERD/C/49/Misc.2/Rev.2) (continued)

65. Mr. WOLFRUM, said that the revised draft incorporated the suggestions made by the Committee but had undergone no changes of substance.

66. Mr. RECHETOV proposed that "voluntarily" should be replaced by "unhindered" in the fifth operative paragraph.

67. Mr. ABOUL-NASR, referring to the fourth operative paragraph, asked how the Committee's request would be transmitted to the Security Council and whether it would be contained in a separate letter to the Secretary-General. With reference to the seventh operative paragraph, he sought clarification of the statement in parentheses that the agreements of the Arusha Regional Summit were now fully endorsed by the OAU. Lastly, the statement in the final

operative paragraph was somewhat platonic, since the Committee was aware that the United Nations did not have the funds for such a force. With those comments, he expressed his support for the draft resolution.

68. Mr. SHAHI, replying to Mr. Aboul-Nasr's question about OAU support for the Arusha agreements, referred him to the statement by the President of the Security Council dated 24 July 1996 (S/PRST/1996/31) explicitly mentioning the full support of the Organization of African Unity for those agreements. The joint communiqué of the second Arusha Regional Summit also contained a clear reference to the OAU's full endorsement of the Arusha initiative. He was aware that the United Nations had no funds for a peace force, but President Clinton had stated that if a peace force were sent to Burundi, the United States of America, while not participating in ground forces for peace-keeping, would provide logistic and financial support. He drew the Committee's attention to a letter from the Secretary-General to the President of the Security Council (S/1996/591) stressing the need to press forward with the ongoing contingency planning for a multinational force, the main concern being to prevent another genocide. Mr. Aboul-Nasr's concerns might be met by rewording the paragraph to read: "Recommends that such a force should receive the financial and logistic support of the United Nations".

69. Mr. LECHUGA HEVIA said, with reference to the fourth operative paragraph, that, like Mr. Aboul-Nasr, he was unclear about the manner in which the Committee would address the Security Council through the Secretary-General. In fact, he questioned the need for the paragraph, which seemed to be asking the Security Council to do something it had already done. Moreover, an international tribunal was already in existence.

70. Mr. van BOVEN asked whether the proposal referred to in the penultimate operative paragraph was a proposal by the Secretary-General; if so, that should be clearly stated. If not, he would welcome some clarification, which could be reflected in the summary records. As a matter of principle, he was in favour of retaining the fourth operative paragraph reaffirming the determination of the international community to prosecute and punish perpetrators of crimes against humanity. The international tribunal that had been set up had been established for Rwanda and the complex question of extending its mandate to include Burundi could not be taken for granted.

71. Mr. RECHETOV endorsed Mr. van Boven's comment about the need to retain the fourth operative paragraph.

72. Mr. SHAHI said in reply to Mr. van Boven's query about the author of the proposal to send a peace force to Burundi that, although the Secretary-General had explicitly referred to the need for a multinational force in his letter to the President of the Security Council (S/1996/591), it was not he who had initially made the proposal, but rather the first Arusha Summit. He did not believe there was any need to specify its origin.

73. Mr. GARVALOV said that it had emerged from the meeting of the chairpersons of treaty bodies with the Secretary-General in June 1995 that when a treaty body wanted information to be transmitted to the Security Council, the request should be sent under separate cover to the Secretary-General. As he remembered, that procedure had been followed by the

Committee in the past. Drawing attention to the third operative paragraph said that the Committee should realistically ask itself whether there were present enough independent, unbiased judicial authorities in Burundi to conduct an efficient investigation. On the question of the proposal to dispatch an international force, he was not in favour of mentioning the Secretary-General as being the author of the proposal, but suggested chang "international" to "multinational" which had been the wording used by the Secretary-General.

74. Mrs. ZOU said that Mr. Wolfrum had informed her that the judicial authorities referred to in the third operative paragraph were the authorit of Burundi. That raised the question of whether the judicial authorities Burundi were in a position at the moment to conduct a fair investigation. Mr. van Boven, for his part, had alluded to the possibility for the mandat the international tribunal on Rwanda to be extended. The text should spec which judicial authorities were meant.

75. Mr. de GOUTTES said that the previous two speakers' point concerning third operative paragraph was well taken. In order to meet their concerns the wording of the paragraph should perhaps be filled out to make it clea that the Committee was asking for urgent measures to be taken to ensure th proper functioning of the justice system so that the judicial authorities could conduct an efficient investigation into the massacres and other acts violence as crimes against humanity.

76. The CHAIRMAN said that he read the wording of the draft as being sufficiently flexible to cover such an eventuality as that provided for i recommendation of the international commission of inquiry concerning the genocide in Rwanda to the effect that judicial personnel from other count who would not be accused of the same kind of partiality as domestic perso might be engaged by the State authorities to undertake such investigation That being said, he would not object to wording along the lines of that suggested by Mr. de Gouttes.

77. Mr. RECHETOV expressed misgivings about the reference to crimes aga humanity, since it was not clear whether it meant crimes designated in domestic legislation as crimes against humanity or whether it implied tha international community was determining that the crimes in question constituted crimes against humanity.

78. Mr. WOLFRUM, recapitulating members' proposals and comments, pointe to Mr. Rechetov that, where returning refugees were concerned, "unhindere did not convey the same meaning as "voluntarily". For clarity's sake, he suggested "of their own free will". On the subject of transmission to th Security Council through the Secretary-General, Mr. Garvalov had rightly recalled the appropriate procedure, for which there was a precedent. He confirmed Mr. Shahi's observation that the agreements of the Arusha Summi been endorsed by the OAU, specifying that the relevant decision had been by the OAU Assembly of Heads of State and Government meeting in Yaoundé, Cameroon, in July 1996. He took it that there was no objection to changi "considers" to "recommends" and "shall" to "should" in the final operativ paragraph. As to the question of the possibility of a tribunal, he point out that the existing tribunal's functions were limited to certain events

Rwanda and that changing its mandate would mean changing a Security Council decision, which was no simple matter. It was an option, but was not for the Committee to decide. The paragraph had been worded in such a way as not to prejudge any action, or otherwise, by the Security Council. Regarding the peace force, he quoted paragraph 14 of the joint communiqué of the second Arusha Regional Summit on Burundi which, inter alia, endorsed the possibility of a multinational peace force. He would be in favour of using the word "multinational" - as used by the Secretary-General - rather than "international".

79. In order to meet the concerns of Mr. Garvalov and Mrs. Zou, and in line with Mr. de Gouttes' suggestion, he proposed that the wording of the third operative paragraph should be amended to read: "Urges that measures be adopted to enable Burundian judicial authorities to conduct an efficient investigation", the rest of the sentence remaining unchanged. As to Mr. Rechetov's doubts about the interpretation of the term "crimes against humanity", he felt that international law provided ample clarification of the term. Lastly, he specified that any necessary minor editorial changes would be made by the secretariat.

80. Mr. SHAHI asked whether "Burundian authorities" might not be more acceptable than "judicial authorities" in operative paragraph 3. Crimes against humanity were amply defined in the Convention on the Prevention and Punishment of the Crime of Genocide. The Secretary-General had referred in his letter to the President of the Security Council to a "multinational force", but he would not object to the insertion of the word "peace".

81. Mr. de GOUTTES said that it was preferable to keep the term "judicial authorities" to indicate the importance the Committee attached to the functioning of justice.

82. The CHAIRMAN said he took it that the Committee wished to adopt the text as amended and subject to minor drafting changes, on the understanding that it would be issued as a resolution and not as a general recommendation of the Committee.

83. It was so decided.

The meeting rose at 1 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1161st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth to fourteenth periodic reports of India (CERD/C/299/Add.3)

1. At the invitation of the Chairman, the members of the Indian delegation took places at the Committee table.

2. Mrs. GHOSE (India) apologized for the fact that her country's report (CERD/C/299/Add.3) had been submitted 10 years late. As indicated in paragraph 2, that had basically been due to India's federal system and the fact that the concept of "race" was not an obvious one for Indians. In addition, the existing structures were no longer equal to the task of producing reports and her country was considering establishing a specific body to do so.

3. The report was brief, since India had chosen to reply to the questions which the members would raise after having read it rather than submit a lengthy report at the outset. That method had been chosen deliberately and could be dropped for the next report if the Committee wished.

4. India was a multiracial and multicultural society. Its population was much more aware of distinction of caste, religion and sex than racial differences. For that reason, race as a ground for discrimination had never been invoked before the Indian courts of law (report, para. 10). "Caste" denoted a social and class distinction (para. 6). The "Scheduled" Castes and Tribes referred to in some annexes of the Indian Constitution were among the economically underprivileged groups and the Constitution provided for positive discrimination measures to improve their economic situation and help them enter the mainstream of national life (para. 6). Those measures had been known to elicit hostility from other population groups, but India remained convinced that they were necessary and justified. Efforts had also focused on education, which was one of the means of eliminating prejudice.

5. A recently established National Human Rights Commission (para. 12) had done some excellent work in that area. The different States had been encouraged to establish such commissions and human rights courts and to focus attention on human rights education (in the military academies and police schools in particular).

6. The Government could not do everything by itself. The non-governmental organizations, which had developed impressively in recent years, were a valuable source of information and the cooperation that had begun between them and the authorities had proved to be valuable. India hoped to attain its objectives and it was certain that the Committee's suggestions and questions would help it to do so.

7. The CHAIRMAN thanked the Indian delegation and assured it that the Committee was aware that the preparation of numerous reports for treaty bodies was a burden for States parties. In view of that difficulty and the

restrictions on the secretariat, when considering reports, the Committee should indicate very precisely what information it wished the State party to provide in its next reports.

8. He took note with interest of the perplexity which the concept of "race" caused in India, whereas the drafters of the Convention had thought "race" was a transcultural concept for which equivalents existed in all languages. Despite that perplexity, the Convention was a valuable resource which should be used as advantageously as possible. The approach taken by the representative of India to the question of race was therefore helpful to the Committee.

9. Mr. RECHETOV (Country Rapporteur) said that the introduction of the representative of India reflected a critical and healthy approach to the situation in the country. The difficulties raised by the complexity of the concepts at issue, such as race and caste, should have no influence on either the reports' regularity or quality. The Committee had prepared guidelines for the preparation of reports, and it was entitled to expect States parties to comply with them.

10. Legislation alone could not solve all the problems, but since the caste system in India had repercussions on the lives of the public at large, changes in the existing structure needed to be speeded up. He welcomed the establishment of the National Human Rights Commission, which was performing a useful task. He would like additional information on the process of democratization, which was apparently being accompanied by acts of separatism and even terrorism in India. To be sure, India was the largest democracy in the world, but democracy and respect for human rights did not always go together.

11. Regrettably the report lacked demographic and social information such as that contained in the table in annex I of the preceding report (CERD/C/149/Add.11). Even if racial discrimination had never been invoked before the courts (para. 10), it was still true that part of the population was considered to be different, and that was important from the standpoint of the Convention. The Committee would like more details on the castes. According to its information, the members of certain lower castes might be denied access to springs when it would be necessary to share water with other communities - and water was a major problem in India - or access to restaurants or other public places. Children in rural schools were divided according to caste. The members of the lower castes were oppressed and made up the majority of the population in a state of servitude.

12. The Committee would also appreciate information on the known religious and linguistic minorities. India was a large country in which many languages and religions coexisted, usually successfully, despite the difficulties. The Committee could not subscribe to the allegation, which had often been heard, but disproved by history, that conflicts between Hinduism and Islam were inevitable. Over the centuries, the Muslims had made a valuable contribution to the construction of the country and it should be possible to eliminate dissension. With regard to Jammu and Kashmir, the information available spoke of persecution that had allegedly caused some Indian minority groups to flee to other regions. The Committee would welcome further information in that connection. It was true that the concept of "race" was vaguely delineated.

The Committee was interested in knowing how the mechanisms that guaranteed the protection of the human rights of everyone, without distinction, functioned in a given country. People whose rights had been violated should be able to defend themselves in the courts. On that point, the Committee would welcome details on the claim for monetary compensation for a human rights violation (para. 32). Acts by the armed forces were also considered to be very important from the standpoint of the Convention. According to his information, there had been a 1992 decision adding a paragraph to article 197 of the Code of Civil Procedure, to the effect that representatives of the armed forces were not held responsible for their acts. The Committee would appreciate information on that decision and, if possible, would like to hear that that provision would be changed.

13. Regarding the unrest in Jammu and Kashmir, he categorically reaffirmed that the Committee did not have the least intention of encouraging separatism. Similarly, the attempt to present the conflict taking place in the province as an exclusively religious one did not reflect the true situation. The troubles afflicting India were largely the result of human rights issues. The widespread violence in Jammu and Kashmir could be attributed to the fact that the regulation procedures were not respected when elections were held, and that encouraged fundamentalism and separatism. It was therefore of the utmost importance to restore democratic institutions in the province and guarantee the transparency of electoral processes through the presence of international observers. It was also extremely important to ensure that the educational system functioned smoothly, for, in situations like the one in Jammu and Kashmir, education could make a vital contribution.

14. Economic and social conditions were also not unrelated to India's problems. The figures spoke for themselves: 55 per cent of the Muslim population had an income under subsistence level and 40 per cent of that group was illiterate. In such a context, bodies like the National Commission on Minorities had an extremely important role to play.

15. As the Indian delegation had said in its oral introduction, the authorities placed high hopes in the work of the National Human Rights Commission. That organization helped to draw the authorities' attention to abuses committed by law enforcement bodies. On its initiative, moreover, the Supreme Court had adopted a number of decisions on compensation for the victims of human rights violations. The Commission was also busy drawing up complete lists of people reporting violations of their human rights by members of the security forces and the military. That organization, which dealt with the entire range of problems found in Indian society, unquestionably played a valuable role.

16. Mr. WOLFRUM said that, considering that the State party had not submitted a report for over eight years, it could have provided a more complete picture of the situation in the country. More detailed information would have improved the dialogue with the Committee. It should be noted, first, that the report stressed constitutional and legislative measures and contained little information on other types of measures that States parties were bound to account for under article 9 of the Convention. The Indian delegation had, however, provided some very useful information in its oral introduction.

17. The articles of the Constitution mentioned in paragraphs 10, 15 and 18 were fully in keeping with the principles of the Convention. Attention should be drawn to article 15 (2), which extended the prohibition against discrimination to relationships between individuals. That was a commendable measure which he would like to see come into general use. It would, however, be interesting to know how that provision was applied in daily life. Had specific cases already arisen, and who had the burden of proof when cases were brought before the courts?

18. Paragraph 20 of the report stated that under article 366 (2) of the Constitution, an Anglo-Indian was defined "as a person whose father or any of whose male progenitors in the male line is or was of European descent". Although he subscribed to the argument on which that statement was based, he wondered why an Anglo-Indian could not have a female ancestor, especially as there were many cases of Englishwomen marrying Indian men.

19. In enacting criminal legislation to prohibit racial discrimination, the State party had complied fully with the provisions of the Convention, but no information was given on the implementation of that legislation. It would be interesting to know what kinds of cases the courts had dealt with and what their decisions had been.

20. The interpretation of the term "descent" (Convention, art. 1) in paragraph 7 of the report was not acceptable. If "descent" was the equivalent of "race", it would not have been necessary to include both concepts in the Convention. The State party's position on the question could not fail to be of concern to the Committee.

21. He would also like to know whether the anti-terrorism legislation was applicable to the situation in the States of Jammu and Kashmir and Assam.

22. It would be interesting to know how the members of the castes were treated by individuals, since the authorities' attitude towards them was not a problem. How did the authorities, especially the police, react when members of a caste were prevented from taking water from a village well reserved for another caste or were victims of discrimination, for example in tea rooms or restaurants? According to some information, children belonging to certain castes were separated from the other children in schools in the rural areas. Did such practices actually take place and, if so, were they widespread or limited to certain regions?

23. Mr. VALENCIA RODRIGUEZ, referring to the comments in paragraphs 6 and 7 of the report noted that, although the concept of "scheduled castes and tribes" was not based on race, it did have an ethnic connotation and discrimination against members of that group was therefore within the purview of article 1 of the Convention. Castes and tribes were extremely important in Indian society and it would be appreciated if the delegation could provide more details on the question and, in particular, on the reasons for the persistence of that phenomenon, especially as India had long been a pillar of international efforts to eliminate racial discrimination. It had also been the first country, in 1946, to raise the problem of apartheid in the United Nations General Assembly.

24. In connection with article 2 of the Convention, he drew attention to article 15 of the Indian Constitution, which prohibited the State and individuals from making any distinction between citizens. The practical aspects of that provision were described in detail in the Indian Penal Code. For a better understanding of the scope of that principle, the Committee would like more details on how it was applied, especially to relations between individuals.

25. Article 366 of the Indian Constitution provided Anglo-Indians with privileges for a period originally not to exceed 10 years. It would be interesting to know whether they had since been eliminated. There were also many minority ethnic groups in India living under extremely difficult conditions and therefore in need of protection. He would like clarifications on their economic, social and cultural situation and the steps taken by the State to improve their living conditions.

26. The constitutional and legislative provisions mentioned in paragraphs 24 and 25 of the report were, to be sure, positive, but they were insufficient to meet the requirements of article 4 of the Convention. Much still needed to be done in that area.

27. With regard to article 5 of the Convention, the information provided by the State party was useful, but not detailed enough. The Committee needed much more precise information in order to make sure that there was in fact no discrimination on grounds of ethnic origin, race or nationality.

28. In connection with article 6 of the Convention, the report stressed the independence of the judiciary and the role of the High Courts, especially the Supreme Court, in cases involving the violation of rights guaranteed by the Convention, but gave no indication of the composition and functions of the people's courts. It would be interesting to know whether there was any overlapping between the people's courts and the ordinary courts.

29. With regard to paragraph 2 of the report, he noted that article 6 of the Convention firmly obliged States to take steps to assure just reparation to victims of acts of discrimination.

30. Concerning the implementation of the provisions of article 7, the various steps taken by the Indian authorities to strengthen tolerance and understanding among the different population groups were commendable, especially the changes in the school curricula and the activities organized by the Indian Council on Cultural Relations. Nevertheless, in a vast and highly populated country like India, which was a mosaic of cultures and languages, broader campaigns had to be conducted to make the public at large aware of the provisions of the Convention, so that victims of acts of discrimination should be familiar with their rights and know which domestic and international remedies were available to them.

31. Mr. de GOUTTES said that the information provided orally by the Indian delegation had fortunately supplemented a periodic report that was too brief for a large and complex country like India. In the general part of the report, he would have liked to see updated demographic information, details on the indicators of lack of social integration of the most disadvantaged groups

and details on disappearances, executions and hostage-takings - reported by numerous sources - occurring during clashes between the Government and armed political groups, especially in Kashmir, Punjab, Assam and other States in the northern part of the country. The section of the report containing an article-by-article analysis was unfortunately too theoretical and focused too much on the legal aspect.

32. Referring to what might be called India's great paradox, he said that, according to the report, on the one hand, Indian society was not ethnically homogeneous and, on the other, race as an issue did not impinge on the outlook of Indian citizens. In explanation of that contradiction, the State party noted in paragraph 6 of the report that "caste" denoted a social distinction and was not based on race, and that would make the provisions of article 2 of the Convention inapplicable. In his view, the problem was complex, but it was unacceptable to say that the serious discrimination against certain castes, especially the untouchables, was not within the Committee's competence.

33. The information on Indian criminal legislation contained in paragraphs 11 to 25 of the report did not help the Committee ascertain whether that legislation was in conformity with article 4 of the Convention. Any clarifications which the Indian delegation might provide would be welcome.

34. Paragraph 10 of the report stated that "race" as a ground for discrimination had never been invoked before the courts of law of India so far. Such a statement made him wonder whether citizens were informed of their rights and the remedies available and whether the lack of court cases was not due to the fact that the police and judicial authorities were not sufficiently attentive to that type of offence.

35. He would like to be given an assessment of the work of the National Human Rights Commission, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission on Minorities mentioned in paragraph 12 of the report.

36. It would also be interesting to know whether the Government intended to make the declaration provided for in article 14 of the Convention. That would be an extremely significant gesture.

37. The CHAIRMAN proposed that consideration of the periodic report of India should be suspended until the next meeting.

38. The Indian delegation withdrew.

Tenth to twelfth periodic reports of Malta (CERD/C/262/Add.4)

39. At the invitation of the Chairman, the members of the Maltese delegation took places at the Committee table.

40. Mr. QUINTANO (Malta), representing the Office of the Attorney-General of Malta, said that, since the submission of the last periodic reports, there had been no instances of racial intolerance or discrimination in the country, primarily because the population was both a limited one (approximately 370,000 people) and a homogeneous one with no traditional minorities. That

homogeneity was strengthened by the nature of the Maltese language itself, which was a mixture of Arabic and European elements. Although recent information about the make-up of the Maltese population by nationality was unavailable, there was an increasing number of foreign students in Malta. The children of refugees in Malta also had no difficulty in becoming integrated.

41. Despite the absence of racial tensions in Malta, legal remedies were available to anyone alleging discrimination on grounds of race, colour or origin. The Constitution prohibited discrimination and could be invoked before the courts. Access to the courts was easy and inexpensive and legal services were provided for people who could not afford them. If the judgement was in favour of the applicant, the laws challenged had to be amended in accordance with new article 242 of the Code of Organization and Civil Procedure and compensation was awarded. All those provisions were in line with articles 6 and 4 (c) of the Convention. Substantial damages had been awarded in cases of political discrimination, but he did not know of a single case of compensation for discrimination on the basis of race, origin or nationality. The European Convention on Human Rights had also been incorporated into Maltese legislation and could be invoked before the courts and applicants could seize the European bodies. Article 45 of the Constitution, which prohibited discrimination, was frequently invoked before the courts, but usually in cases involving discrimination on political or religious grounds. The 1932 Seditious Propaganda (Prohibition) Ordinance (para. 6), which had been amended 10 times, prohibited any incitement to racial hatred and established severe penalties for infringements of the law. Although no specific legislation on racial discrimination had been enacted, the exercise of the rights listed in article 5 of the Convention was enforced by the above-mentioned provisions. Mention should also be made of Act XXI of 1995 establishing the Office of the Ombudsman, mentioned in paragraph 9 of the report. The Ombudsman, who had extensive powers to ensure the protection of individuals against abuse of authority, had not received any complaints since his appointment.

42. It might be wondered why the Constitution contained such an extensive article prohibiting discrimination based on race, colour or origin when Malta had no problems in those areas. The answer lay in the history of the country: when Malta, a former British colony, had become independent in 1964, it had chosen to base its Constitution on the framework constitution being adopted by most of the former colonies, in order to anticipate any problems in the area of discrimination.

43. Steps had been taken to provide human rights education to the members of the police and help them to understand the need to treat all individuals equally. The courts were independent and impartial and judges were appointed virtually for life. They could only be removed by a two-thirds majority of the House, which was practically impossible to attain since there were two dominant forces in the political arena. No judge had been removed to date.

44. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that, although Malta's report was generally in keeping with the Committee's guidelines, it was somewhat lacking in detail. On substance, he welcomed the fact that there had been no incidents of racial discrimination in Malta and that a complex

intercultural harmony prevailed in the country. Even if there were no significant ethnic minorities and the Maltese Government did not feel the need to adopt specific legislation, however, it should be stressed that no society was immune to racial discrimination and that some prejudice, based on ancient traditions, persisted. Generally speaking, it would be interesting to know what progress had been made in the discussions on constitutional reform mentioned in paragraph 23 of the report.

45. Concerning the implementation of the Convention article by article, he reminded the Maltese authorities that, in signing the Convention, they had promised to enact special legislation to give effect to article 4 (a), (b) and (c), taking account of the principles embodied in the Universal Declaration of Human Rights and the rights provided for in article 5. The Seditious Propaganda (Prohibition) Ordinance (para. 6) was therefore not sufficient, especially as paragraph 10 of the report stressed that racial discrimination was widely unaccepted in Maltese society. The Committee therefore hoped that the next report would contain information on specific legislation enacted.

46. With regard to the implementation of article 5 of the Convention, paragraph 11 of the report stated that everyone in Malta was entitled to individual freedoms. If that was the case, why did article 44 of the Constitution explicitly guarantee the protection of freedom of movement to Maltese citizens only? Had there been cases where the freedom of movement of other persons had been restricted? More information was also needed on existing remedies for violations of that article of the Convention. Concerning article 45 of the Constitution, which prohibited discrimination on the ground of race and related more directly to the Convention, further information was also needed on any specific cases of discrimination. As to the remedies and reparation provided for in article 6 of the Convention, the report stated that individuals and groups had the possibility of recourse to the courts, the Constitutional Court, the European Court of Human Rights and the Human Rights Committee. To file a remedy with the Committee, however, a person first had to have turned to the European Court, in view of the reservation the Government had made when it had ratified the Optional Protocol. It would therefore be interesting to know how exactly Malta interpreted article 6 of the Convention and what legal or other effects derived from its interpretation. Might the Government consider withdrawing the reservation?

47. The report was also somewhat brief on the measures taken in the areas of education and training to combat racial prejudices, as required by article 7. It did say that social life was based on principles that fostered tolerance and that campaigns against the negative effects of racial discrimination had been undertaken in the media (paras. 18 and 10), but the Committee would like to know whether the Convention had been sufficiently published and distributed. On another matter, was the Maltese Government considering making the declaration under article 14 of the Convention, to the effect that it recognized the competence of the Committee to receive and consider communications from individuals?

48. With regard to the demographic composition of the country, the documentation provided by the delegation indicated that the number of

naturalizations had increased. He would like to know which foreigners had become naturalized, what criteria governed the granting of naturalization and whether such criteria were applied without discrimination. The Committee had also been provided with a copy of an issue of Malta's Official Journal containing the list of foreigners holding a work permit in November 1995. That was another case where it would be interesting to know the criteria used for issuing the permits.

49. Mr. GARVALOV said that the Maltese report raised a number of matters of principle. Even if Malta had an excellent record in combating racial discrimination, it could not claim to be completely immune to it. The Convention did not say that it applied only to States parties in which racial discrimination existed: the Convention made it compulsory for all States parties to take specific steps to give effect to the provisions of articles 2, 4 and 6, in particular. Again, it should be stressed that article 4 was binding.

50. The report was therefore interesting, but somewhat brief. For example, paragraph 5 said that it would be useless to repeat the diverging opinions of the Committee and the Maltese Government concerning the anti-discrimination legislation already described. In his view, however, there was no reason not to continue the discussion! Paragraph 6 was also somewhat ambiguous, stating that, although Maltese citizens were traditionally known for their acceptance of different cultures and ideologies, that did not automatically mean that all Maltese were persons "who could not be prejudiced".

51. With regard to paragraph 10, he found a contradiction between the fact that racial discrimination was unaccepted in Maltese society and the fact that the Government had deemed it necessary to undertake campaigns to mobilize public opinion about the negative effect of racial discrimination. He was convinced that campaigns were organized only when problems existed.

52. The establishment of an Ombudsman's office was an excellent initiative and he welcomed the fact that the work being done by the Ombudsman was provided for by law.

53. The same paragraph made it clear that Malta continued to believe that the measures provided for in article 4 of the Convention were not binding, despite the fact that the Committee had already clearly stated that they were. In that connection, he asked about the status of the Convention in domestic law and whether it could be invoked before the Maltese courts.

54. He had been very impressed by the information provided on the implementation of article 7. He wondered whether, in addition to the campaigns mentioned in article 10, human rights, in particular the provisions of the Convention, were taught in the schools.

55. Mr. de GOUTTES expressed appreciation for the information provided on the demographic and linguistic features of Malta. Another piece of information given, however, appeared to be somewhat questionable; like Mr. Valencia Rodriguez, he found it difficult to believe that there was no known racial discrimination on the island.

56. Malta had made an interpretative declaration on article 4 of the Convention, which the Committee had refuted as far back as March 1991, when it had considered Malta's eleventh periodic report. The twelfth periodic report stated that there were plan "in the near future" to enact specific legislation. That was good news, but he would like to know whether it would come to fruition and, if so, whether the State party's reservation would then be withdrawn.

57. Paragraph 9 also stated that the Government was considering making the required declaration under article 14 of the Convention. Would that step be taken soon? Malta had already accepted the declaration laid down in article 25 of the European Convention on Human Rights and, if it were to make the declaration under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, it would be joining the ranks of the countries that had chosen to make both declarations. The step would not be negligible, for the two Conventions were complementary. Malta had also accepted the principle of individual remedies being filed with the Human Rights Committee, provided that such remedies had not been submitted to the European Court of Human Rights. He wondered whether that restriction would also apply to remedies filed with the Committee on the Elimination of Racial Discrimination.

58. Mr. WOLFRUM said that he strongly opposed the statement in paragraph 5 that it was not necessary to enact legislation to combat racial discrimination since there was no racial discrimination in Malta. He endorsed Mr. Garvalov's comments that it was inaccurate to state that the Maltese population was homogeneous, since the presence of refugees in Malta, as mentioned in paragraph 19, refuted that statement.

59. The misunderstanding between Malta and the Committee with regard to article 4 of the Convention continued. Malta's interpretation that there was no point in enacting specific legislation, since there were no concerted attempts to promote racial hatred or divisions in the country, was far too restrictive.

60. With regard to the implementation of article 2, the discussion in paragraph 7 of the report was not sufficiently explicit. The status of the Convention in Maltese domestic legislation was not clearly defined; it was not indicated whether the Convention could be directly invoked before the Maltese courts and, if so, in which cases: disputes with the Government only or disputes between individuals. It also did not indicate whether the text of the Convention had been published, either in English or in Maltese. He expected replies to those questions, if not at the current session, at least in the following report, which he hoped would be submitted on time.

61. Mr. SHERIFIS, noting that Malta and the Committee held firmly to their respective positions on the interpretation of articles 4 and 6, said that the Committee would surely not change its opinion, but it was prepared to help the State party modify its point of view.

62. The members of the Committee, as a whole and individually, were also convinced of the need for making the declaration provided for in article 14 of

the Convention. At a time when Malta was preparing for negotiations to ent the European Union, it should join the many other European countries that h made that declaration.

63. He would also like to know whether Malta had decided to adopt the amendment to the Convention concerning the financing of the Committee.

64. Mr. YUTZIS said that the diverging opinions of Malta and the Committe which persisted despite the fact that the dialogue was moving ahead in othe areas, might be due to the island's colonial history, which caused it to v racial discrimination from a specific viewpoint. Like Mr. de Gouttes, he stressed the preventive and educational nature of the law, whose purpose wa not only repressive. For that reason, he could not accept the argument put forward by Malta in paragraph 5 of the report that there was no need to em specific legislation unless there was significant ethnic diversity within a society.

65. Considering that a number of people had sought refuge in Malta, it w be quite surprising for the Maltese not to feel threatened. They would certainly be an exceptional case if they did not. The statement that "Afte all, everyone is entitled to his opinions" in paragraph 6 of the report cal for comment: the right of every citizen to an opinion should certainly be respected, but there were opinions and opinions; someone who publicly stat that "Jews belong to an inferior race" was committing a crime and it was no certain that the provisions on seditious propaganda were applicable to such case. Article 4 of the Convention required much more explicit measures. nearly unanimous interpretation of articles 4 and 2 of the Convention by t Committee should encourage Malta to put an end to the controversy and duly apply those articles.

66. Mr. QUINTANO (Malta) said that, for lack of time, he would reply to questions at the following meeting, but would like to bring the question o the diverging opinions of the Committee and Malta into perspective. Regrettably, the members of the Committee had probably not seen article 45 the Constitution in its entirety or been informed of how vigorously the co interpreted it. That article protected most of the rights listed in artic of the Convention and could easily be referred to in the Constitutional Co by anyone who felt that his or her rights had been violated.

67. Maltese legal experts were at work on bringing Maltese legislation i conformity with European instruments.

The meeting rose at 6 p.m.